

MYERS INDUSTRIES INC

FORM 8-K (Current report filing)

Filed 03/16/10 for the Period Ending 03/10/10

Address	1293 S MAIN ST AKRON, OH 44301
Telephone	330-253-5592
CIK	0000069488
Symbol	MYE
SIC Code	3089 - Plastics Products, Not Elsewhere Classified
Industry	Fabricated Plastic & Rubber
Sector	Basic Materials
Fiscal Year	12/31

**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) March 10, 2010

MYERS INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

Ohio

(State or other jurisdiction
of incorporation)

1-8524

(Commission File Number)

34-0778636

(IRS Employer Identification Number)

1293 South Main Street, Akron, OH

(Address of Principal Executive Offices)

44301

(Zip Code)

Registrant's Telephone Number, including area code (330) 253-5592

(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))
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Item 5.02 . Departure of Director

In response to not being nominated by the independent members of the Board of Directors of Myers Industries, Inc. (the “Company”) for election as a director at the annual meeting of shareholders to be held on April 30, 2010, Stephen E. Myers resigned as a director of the Company effective March 10, 2010. Mr. Myers sent a letter to the Board of Directors of the Company (the “Board”) stating that his resignation was prompted by his disagreement with the Board over certain practices and policies. The full text of Mr. Myers’ resignation letter is attached as Exhibit 17.1 to this Current Report on Form 8-K and the above description of the letter is qualified in its entirety by reference to the full text of the letter.

On March 16, 2010, the Board sent a letter to Mr. Myers accepting his resignation and indicating that the decision not to include him in the slate of nominees to the Board arose, in part, out of a recognition that Mr. Myers was usually unable to (or refused to) address Board matters on a timely basis or in a forthright manner. The letter also reiterated the Board’s belief that the decision not to include Mr. Myers as a nominee is in the best interests of the Company and its shareholders.

The Board also noted in its letter several facts refuting the allegations made by Mr. Myers in his resignation letter, including that:

- (i) the Board has not increased its compensation for independent director service since 2005. Furthermore, a review by Towers Watson in July, 2009 demonstrated that the direct compensation for independent directors at the Company fell well below the total compensation paid to directors at comparable peer companies;
- (ii) the independent directors of the Board meet in executive session after each Board meeting; and
- (iii) many leading experts, as well as the courts of Ohio and other states, endorse the use of advance notice requirements for direct shareholder nominations of director candidates and shareholder proposals as an effective means to bring structure to these processes and control the costs incurred by the Company in responding.

The full text of the Board’s letter to Mr. Myers is attached as Exhibit 17.2 to this Current Report on Form 8-K and the above description of the letter is qualified in its entirety by reference to the full text of the letter.

Item 9.01 . Financial Statements and Exhibits

- 17.1 Resignation Letter of Stephen E. Myers, dated March 10, 2010
 - 17.2 Letter to Stephen E. Myers from Board of Directors, dated March 16, 2010
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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.

Myers Industries, Inc.
(Registrant)

DATE March 16, 2010

By: /s/ Donald A. Merrill

Donald A. Merrill
Vice President, Chief Financial Officer
and Corporate Secretary

Stephen E. Myers
53 Aurora St.
Hudson, Ohio 44236

10 March, 2010

Board of Directors
Myers Industries, Inc.
1293 South Main Street
Akron, OH 44301

Members of the Board:

I hereby resign from the Board of Directors, effective immediately. My resignation is prompted by my continuing disagreement with the Board over a number of important practices and policies. I feel that the Board's continued unwillingness to consider my views on these matters, as evidenced by its decision not to include me in management's slate of nominees for the upcoming meeting, leaves me no other choice.

It is equally clear to me that the Board's choice was largely in reaction to my failure to vote as a shareholder of Myers Industries stock in accordance with its recommendations at the last Annual Meeting. Furthermore, I am concerned that a number of the Board's practices and policy decisions are not in the best interests of the shareholders, and that the Board is not working effectively to preserve or augment the value of the company. My specific concerns include:

- The Board's decisions to and preoccupation to continue to increase its compensation despite the absence of sustainable performance-linked justification;
 - The failure to endorse, in spite of expensive and extensive use of outside consultants, a coherent, consistent, and effective strategy for the Company's guidance;
 - The adoption of governance practices that hinder shareholders' ability to voice their legitimate concerns both to the Board and to other shareholders
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within the forum of the Company's Annual Meeting; most recently demonstrated by its enactment of processes which dramatically burden shareholders and constrain the timeframe within which shareholders may propose matters to be considered or acted upon at the Annual Meeting, the Board's first use — I believe a misuse — of the expanded authority granted by shareholders at the last annual meeting.

As I have expressed to members of the Board, both singly and severally, I remain concerned that the manner in which the Board makes decisions has contributed to the poor outcomes of many of them:

- The Board's frequent practice of making important and costly decisions by either written consent or telephonic board meetings, instead of subjecting such decisions to the forge of full and vigorous discussion at the boardroom table.
- The adopted practice of the full board not meeting without management present after each meeting, a misuse of the purpose of "executive session."
- The Board's concern with unanimity and its intolerance of divergent opinion within or without its ranks.

I think the above has contributed to poor decisions in recent years, including ill-considered and ill-fated acquisitions that have incurred losses and resulted in significant write-downs and impairment charges.

I have spent my entire life working to build the Company and increase its value both to its employees and its shareholders. So it is with great regret and sadness that I find myself at this point. I wish the Company, its shareholders, and its employees all success and better guidance in the future.

Sincerely,

/s/ Stephen E. Myers

Stephen E. Myers



March 16, 2010

PERSONAL AND CONFIDENTIAL

Mr. Stephen E. Myers
53 Aurora Street
Hudson, OH 44236

Dear Steve,

The Board of Directors of Myers Industries, Inc. hereby accepts your letter of resignation dated March 10, 2010. Your letter expresses a number of issues with which the Board disagrees. Your views and opinions have always been valued and considered, even when divergent from those of other members of the Board.

This Board views service as a director as a privilege, and not an entitlement. The Board consistently strives to bring greater independence, diversity of views, and skills to our Board. As was discussed with you in person at the Board meeting last week, your relationship with Myers Industries, Inc. has been an important one over the years, and your contributions many. The decision not to include you in the slate of nominees to the Board arose, in part, out of a recognition that you are usually unable to (or refuse to) address Board matters on a timely basis or in a forthright manner. We believe our decision not to include you as a nominee is in the best interests of the company and its shareholders.

Since you have chosen to voice specific allegations in your letter, the Board is compelled to respond to these statements to set the record straight.

- Contrary to your assertion, the Board has not increased its compensation for independent director service since 2005. As you are aware, a review by Towers Watson in July, 2009 demonstrated that the direct compensation for independent directors at Myers Industries, Inc. fell well below the total compensation paid to directors at comparable peer companies.
- With respect to strategic planning, you and the rest of the directors annually review in detail, and endorse, the company's strategic plan, including most recently at a two day meeting in January 2010. The Board and management are confident that Myers Industries, Inc. adopted a very cohesive and coherent strategy, to wit: to invest, grow and optimize our portfolio of businesses through new product innovation, operations excellence, portfolio optimization such as

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development of high-value niche markets, defensible competitive advantages, strategic acquisitions, and maintaining a disciplined capital structure with strong cash flow. Given your historic role in the Company's management, you have been integral to the development of that strategic plan. You have also been a champion of many of the strategic acquisitions made by the Company over the years.

- The Board and management understand the value of in person meetings. You, along with the rest of the Company's directors have busy travel schedules, and many charitable and professional commitments. Many of our directors live outside of Northeast Ohio. We view robust director participation in decisions and discussions as critical to good corporate governance and decision making, and therefore hold and schedule meetings in the manner that maximizes director participation in the time frame required. In addition, telephonic meetings, without the expense of travel reimbursements, are more cost effective than in person meetings, particularly when a single or perfunctory subject is to be addressed. Furthermore, in 2009, five of eight Board meetings were conducted in person.
- The independent directors of the Board meet in executive session after each Board meeting. Your statement to the contrary is simply false.
- The Board's adoption of advance notice requirements for direct shareholder nominations of director candidates and shareholder proposals to be considered at our annual meetings is a legitimate exercise of the authority granted by our shareholders at last year's meeting and permitted by Ohio corporate law. While you may view these requirements as an unacceptable burden on shareholders, many leading experts, as well as the courts of this state and others, endorse such measures as an effective means to bring structure to these processes and control the costs incurred by the company in responding.

We continue to wish you well in your future endeavors.

Sincerely,

Myers Industries, Inc.
Board of Directors

/s/ Richard P. Johnston
Richard P. Johnston, Chairman