VULCAN MATERIALS CO

FORM 8-K
(Current report filing)

Filed 03/11/10 for the Period Ending 03/11/10

Address	1200 URBAN CENTER DRIVE BIRMINGHAM, AL 35242
Telephone	2052983000
CIK	0001396009
Symbol	VMC
SIC Code	1400 - Mining & Quarrying of Nonmetallic Minerals (No Fuels)
Industry	Construction - Raw Materials
Sector	Capital Goods
Fiscal Year	12/31

SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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 11, 2010

VULCAN MATERIALS COMPANY
(Exact name of registrant as specified in its charter)

New Jersey	**001-33841**	**20-8579133**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1200 Urban Center Drive
Birmingham, Alabama 35242
(Address of principal executive offices) (zip code)

(205) 298-3000
Registrant's telephone number, including area code:

Not Applicable
(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 obligations 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.

Vulcan Materials Company (the "Company") has amended its Performance Share Unit (PSU) Award Agreement for use in granting awards under its 2006 Omnibus Long-Term Incentive Plan to its senior executives, including each of its executive officers.

The form agreement for the grants of PSUs is attached hereto as Exhibit No. 10.1.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits:

Exhibit No.	Description
10.1	Form Performance Share Unit Award Agreement, as amended.

SIGNATURES

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

Vulcan Materials Company

Date: March 11, 2010

By: /s/ Robert A. Wason IV
Robert A. Wason IV

Exhibit 10.1

**THIS DOCUMENT CONSTITUTES PART OF
A PROSPECTUS COVERING SECURITIES THAT
HAVE BEEN REGISTERED UNDER THE
SECURITIES ACT OF 1933**

VULCAN MATERIALS COMPANY

PERFORMANCE SHARE UNIT AWARD AGREEMENT

Terms and Conditions

1. ***Definitions .*** As used in this Award Agreement the following terms shall have the meanings as follows:

(a) "Award Agreement" means this Performance Share Unit Award Agreement.

(b) "Performance Period" means the three-year period shown on Section 3 of this Award Agreement, except that in the “Event” of the Participant’s death or a change in control (as defined in regulations or other guidance under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code")), the Performance Period will be the period covered by the Award Agreement ending on December 31 st of the calendar year in which the Event occurred.

(c) "Company" means Vulcan Materials Company, a New Jersey corporation.

(d) "Committee" means the Compensation Committee of the Board of Directors.

(e) “Disability” means Permanent and Total Disability whereby the Participant is entitled to long-term disability benefits under the applicable group long-term disability plan of the Company or a Subsidiary, or, to the extent not eligible to participate in any Company-sponsored plan, under the guidelines of the Social Security Administration.

(f) “Fair Market Value or “FMV” means the closing stock price for a Share on the business day that immediately precedes the Payment Date as reported on a national securities exchange if the Shares are then being traded on such an exchange or as determined by the Committee if Shares are not so traded.

(g) "Grant Date" means the date of this Award Agreement.

(h) "Participant" means the name of the employee of the Company or its subsidiaries or affiliates.

(i) “Payment Date” means the date on which payment is made under this Award Agreement.

(j) "Performance Share Unit" or “PSU” means the equivalent of one share of Common Stock.

(k) "Plan" means the Vulcan Materials Company 2006 Omnibus Long-Term Incentive Plan, as amended, or any successor plan, as amended.

(l) “Share" means a share of Common Stock, par value $1.00 per share, of the Company.

2. ***Grant and Vesting of PSUs***

(a) Grant. The Participant is awarded the number of PSUs identified through the electronic, on-line grant acceptance process, subject to terms and conditions set forth in the Agreement. Depending on the company's performance as set forth in Section 3, the participant may earn zero percent (0%) to two hundred percent (200%) of the shares awarded.

(b) Vesting . Except as otherwise provided in Section 4, and subject to the Committee's discretion set forth in Section 6, the PSUs will become vested on December 31, at the end of the Performance Period.

3. ***Payment of Performance Share Units***

(a) Performance Period and Measures. The Performance Period for this award begins on January 1, 2010 and ends on December 31, 2012. The Percentage of the award earned and paid will be established by the Committee based on the company's 3-year average Total Shareholder Return ("TSR") relative to S&P 500 Index as comprised on January 1 of the year of grant. The maximum Percentage may be decreased but not increased by the Committee. The following table A reflects the goals which performance will be measured for payment of the PSUs awarded.

Performance Share Unit Payment Table

TABLE A

3-Year Average Total Shareholder Return Percentile Rank Relative to S&P 500 Index	% of Performance Share Share Units Payable
75th or >	200
50th	100
25th or <	0

(b) Units Payable. The number of PSUs payable is the shares awarded multiplied by the TSR Percentage payable. For performance levels falling between the values as shown above, the Percentages will be determined by interpolation. Payment will be made in stock.

(c) The Value of the Stock Issued as Payment for PSUs Earned. The FMV will be used to determine the basis of the stock payable.

(d) Withholding . The Company shall withhold Shares having a Fair Market Value on the date the tax is to be determined equal to the minimum statutory amount for federal, state, local, and employment taxes ("Total Tax") which could be withheld on the transaction, with respect to any taxable event arising as a result of this Award Agreement.

(e) Timing of Payment . Payment will be made to a Participant between January 1 and March 15 of the calendar year after the calendar year in which the Performance Period [as defined in Section 1(b)], ends.

(f) Payment Determination . The Committee may exercise its discretion to reduce or eliminate payments if the Performance Period average TSR is less than or equal to the 25th percentile.

4. ***Termination of Employment.***

(a) Termination at age 55 and above.

(i) If a Participant terminates from employment at age 55-61, the PSUs will become non-forfeitable in accordance with Table B and will be paid in accordance with Section 3 . The Participant may be required to execute a reasonable non-competition covenant with the Company restricting the Participant from competing with the Company in a specified territory for a specified period of time. If such covenant is required by the Company and is not executed by the Participant, unvested PSUs will be forfeited and vested PSUs not yet paid as of the date of such termination will be paid in accordance with Section 3.

TABLE B

If termination at age 55-61 occurs on or after January 1st of the:	The percentage of PSUs that will become Non-forfeitable is:
1st Calendar year following the Grant Date	33%
2nd Calendar year following the Grant Date	67%
3rd Calendar year following the Grant Date	100%

(ii) If a Participant terminates from employment at age 62 or later, the PSUs which have been held by the Participant until January 1st of the calendar year following the year of grant, will be deemed to be non-forfeitable and will be paid in accordance with Section 3 . The Participant may be required to execute a reasonable non-competition covenant with the Company restricting the Participant from competing with the Company in a specified territory for a specified period of time. If such covenant is required by the Company and is not executed by the Participant, unvested PSUs will be forfeited and vested PSUs not yet paid as of the date of such termination will be paid in accordance with Section 3.

(b) Disability . Upon determination of Disability, as defined in Section 1(e), the PSUs granted under this Award Agreement will become non-forfeitable. All non-forfeitable PSUs will be paid in accordance with Section 3.

(c) Death . Upon the death of the Participant, the PSUs granted under this Award Agreement will become non-forfeitable. All non-forfeitable PSUs will be paid to the Participant's beneficiary or estate in accordance with Section 3.

(d) Other Termination. Upon voluntary termination prior to age 55, or upon involuntary termination for reasons other than death, Disability, or cause as determined under Section 4(e), unvested PSUs will be forfeited and vested PSUs not yet paid as of the date of such termination will be paid in accordance with Section 3.

(e) Termination for Cause. If a Participant's employment is terminated for cause, the PSUs will immediately be forfeited, even with respect to vested PSUs which were otherwise non-forfeitable but not yet paid. The Committee shall have complete discretion to determine whether a Participant has been terminated for cause. The Committee's determination shall be final and binding on all persons for purposes of the Plan and this Award Agreement.

(f) Change in Control of the Company. Upon a Change in Control of the Company, as defined in regulations or other guidance under Section 409A of the Code, the PSUs granted under this Award Agreement will be deemed to be non-forfeitable. All non-forfeitable PSUs will be paid in accordance with Section 3.

5. ***Section 16(b) Participants*** . Any Participant subject to Section 16(b) reporting shall be governed by same with respect to PSUs.

6. ***Committee Discretion.*** The Committee may, in its sole discretion, amend this Award Agreement to the extent necessary to comply with any statute, regulation, or other administrative guidance. Notwithstanding any other provision of the Plan or this Award Agreement, the Committee may amend the Plan or this Award Agreement to the extent permitted by their terms and deem any units granted under this Award non-forfeitable for the events described in Sections 4(a) and 4(d). The Committee shall not make any amendment pursuant to this Section 6 that would cause this Award Agreement, if it is subject to or becomes subject to Section 409A of the Internal Revenue Code, to fail to satisfy the requirements of such Section 409A. The Committee has sole discretion to establish the Comparison Group to be used in evaluating the performance of the Company in accordance with Section 3(a), and may change the Comparison Group from time to time.

7. ***Entire Agreement; Amendment*** . This Award Agreement, The Memorandum, and the Plan are incorporated herewith and represent the entire understanding and agreement between the Company and the Participant, and shall supersede any prior agreement and understanding between the parties. Except as provided in Section 6 of this Agreement and subject to any Plan provision, this Award may not be amended or modified except by a written instrument executed by the parties hereto.

8. ***Non-Solicitation.*** In consideration for this Agreement and notwithstanding any other provision in this Agreement, the Participant agrees to comply with the non-solicitation covenants set forth below:

(a) Non-Solicitation of Customers. The Participant acknowledges that while employed by the Company, the Participant will occupy a position of trust and confidence and will acquire confidential information about the Company, its subsidiaries and affiliates, and their clients and customers that is not disclosed by the Company or any of its subsidiaries or affiliates in the ordinary course of business, including trade secrets, data, formulae, information concerning customers and other information which is of value to the Company because it is not generally known. The Participant agrees that during the period of employment with the Company and for a period of two years after the date of termination of employment with the Company, regardless of the reason for termination, the Participant will not, either individually or as an officer, director, stockholder, member, partner, agent, consultant or principal of another business firm, directly or indirectly solicit any customer of the Company or of its affiliates or subsidiaries.

(b) Non-Solicitation of Employees . The Participant recognizes that while employed by the Company, the Participant will possess confidential information about other employees of the Company and its subsidiaries or affiliates relating to their education, experience, skills, abilities, compensation and benefits, and inter-personal relationships with suppliers to and customers of the Company and its subsidiaries or affiliates. The Participant recognizes that this information is not generally known, is of substantial value to the Company and its subsidiaries or affiliates in developing their respective businesses and in securing and retaining customers, and will be acquired by the Participant because of the Participant's business position with the Company. The Participant agrees that during the period of employment with the Company and for two years after the date of termination of employment with the Company, regardless of the reason for termination, the Participant will not, directly or indirectly, solicit or recruit any employee of the Company or any of its subsidiaries or affiliates for the purpose of being employed by the Participant or by any business, individual, partnership, firm, corporation or other entity on whose behalf the Participant is acting as an agent, representative or employee and that the Participant will not convey any such confidential information or trade secrets about other employees of the Company or any of its subsidiaries or affiliates to any other person except within the scope of the Participant's duties as an employee of the Company.

(c) Remedies . If any dispute arises concerning the violation by the Participant of the covenants described in this Section, an injunction may be issued restraining such violation pending the determination of such controversy, and no bond or other security shall be required in connection therewith. If the Participant violates any of the obligations in this Section, this Award Agreement will terminate, if it is outstanding, and, in addition, the Company will be entitled to any appropriate relief, including money damages, equitable relief, and attorneys' fees.