

Edgar Filing: Clean Energy Fuels Corp. - Form 10-K/A

Clean Energy Fuels Corp.

Form 10-K/A

April 13, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

(Mark

One)

☑ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934

For the fiscal year ended: December 31, 2017

or

○ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934

Commission File Number: 001-33480

CLEAN ENERGY FUELS CORP.

(Exact name of registrant as specified in its charter)

Delaware

33-0968580

(State or other jurisdiction of incorporation) (IRS Employer Identification No.)

4675 MacArthur Court, Suite 800, Newport Beach, CA 92660

(Address of principal executive offices, including zip code)

(949) 437-1000

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	The Nasdaq Stock Market

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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  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 (§ 229.405 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  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer <input type="radio"/>	Accelerated filer <input checked="" type="checkbox"/>	Non-accelerated filer <input type="radio"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="radio"/>	Emerging growth company <input type="radio"/>
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If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Act). Yes  No   
The aggregate market value of the voting stock held by non-affiliates of the registrant as of June 30, 2017, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$343,111,833 (computed by reference to the price at which the registrant's common stock was last sold on such date, as reported by The Nasdaq Global Select Market). Shares of common stock held by the registrant's officers and directors and beneficial owners of 10% or more of the outstanding shares of the registrant's common stock have been excluded from the calculation of this amount because such persons may be deemed to be affiliates of the registrant; however, the treatment of these persons as affiliates of the registrant for purposes of the calculation of this amount is not, and shall not be considered, a determination as to whether any such person is an affiliate of the registrant for any other purpose. As of March 6, 2018, the number of outstanding shares of the registrant's common stock was 152,394,550.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive proxy statement for its 2018 annual meeting of stockholders are incorporated in Part III of this report by reference, to the extent stated therein.

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EXPLANATORY NOTE

The undersigned registrant is filing this Amendment No. 1 to Form 10-K (this “Amendment”) for the sole purpose of including hyperlinks to all exhibits listed in the Exhibit Index included in its Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (the “Original Annual Report”), as filed with the Securities and Exchange Commission (the “SEC”) on March 13, 2018. As a result, and in accordance with applicable SEC rules, this Amendment hereby amends and restates in its entirety Item 15 of Part IV of the Original Annual Report as set forth herein.

Except as expressly described above and as set forth herein, this Amendment does not modify the Original Annual Report in any way, including, without limitation, to reflect events occurring after the date of, or update any of the disclosures included in, the Original Annual Report. Accordingly, this Amendment should be read in conjunction with the Original Annual Report in all respects, as well as with the registrant’s other documents filed with the SEC subsequent to the Original Annual Report.

Item 15. Exhibits and Financial Statement Schedules.

(a)(1) Consolidated Financial Statements

The following items are filed in Part II, Item 8 of this report:

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets

Consolidated Statements of Operations

Consolidated Statements of Comprehensive Loss

Consolidated Statements of Stockholders' Equity

Consolidated Statements of Cash Flows

Notes to Consolidated Financial Statements

(a)(2) Financial Statement Schedules

The financial statement schedule set forth below is filed as a part of this report. All other schedules have been omitted because they are not required, not applicable, or the required information is otherwise included.

Schedule II - Valuation and Qualifying Accounts

(In thousands)

	Allowance	Allowance
	for	for
	Doubtful	Doubtful
	Trade	Notes
	Receivables	Receivables
Balance as of December 31, 2014	\$752	\$ 2,850
Charges (benefit) to operations	1,514	1,142
Deductions	(371 )	(2 )
Balance as of December 31, 2015	1,895	3,990
Charges (benefit) to operations	1,107	1,617
Deductions	(1,939 )	(4,377 )
Balance as of December 31, 2016	1,063	1,230
Charges (benefit) to operations	395	3,344
Deductions	(182 )	(30 )
Balance as of December 31, 2017	\$1,276	\$ 4,544

(a)(3) Exhibits

The information required by this Item 15(a)(3) is set forth on the exhibit index, which immediately precedes the signature page to this report and is incorporated herein by reference.

EXHIBIT INDEX

Exhibit Number	Description	Incorporated herein by reference to the following filings: Form	Filed on
2.11§	<u>Asset Purchase Agreement dated February 27, 2017, by and among Clean Energy Renewable Fuels, LLC, BP Products North America, Inc. and, solely with respect to Article VIII thereof, Clean Energy and BP Corporation North America, Inc.</u>	Filed as Exhibit 2.11 to the Current Report on Form 8-K.	March 1, 2017
2.12	<u>Investment Agreement dated November 26, 2017, by and between Clean Energy and Landi Renzo S.p.A.</u>	Filed as Exhibit 2.12 to the Current Report on Form 8-K.	November 27, 2017
3.1	<u>Restated Certificate of Incorporation, as amended by the Certificate of Amendment to the Restated Certificate of Incorporation of the Registrant dated May 28, 2010, as further amended by the Certificate of Amendment to the Restated Certificate of Incorporation of the Registrant dated May 8, 2014.</u>	Filed as Exhibit 3.1.2 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2014.	August 7, 2014
3.2	<u>Amended and Restated Bylaws.</u>	Filed as Exhibit 3.2 to the Current Report on Form 8-K.	February 23, 2011
3.2.1	<u>Amendment No. 1 to Amended and Restated Bylaws.</u>	Filed as Exhibit 3.2.1 to the Current Report on Form 8-K.	February 27, 2014
4.1	<u>Specimen Common Stock Certificate.</u>	Filed as Exhibit 4.1 to the Registration Statement on Form S-1, as amended.	March 27, 2007
4.10	<u>Form of Replacement Note issued by the Registrant.</u>	Filed as Exhibit 4.9 to the Current Report on Form 8-K.	June 18, 2013
4.11	<u>Indenture dated September 16, 2013, between the Registrant and U.S. Bank National Association.</u>	Filed as Exhibit 4.11 to the Current Report on Form 8-K.	September 16, 2013
4.12	<u>Form of 5.25% Convertible Senior Note due 2018.</u>	Included with Exhibit 4.11 to the Current Report on Form 8-K.	September 16, 2013
10.4+	<u>Form of Indemnification Agreement.</u>	Filed as Exhibit 10.4 to the Registration Statement on Form S-1, as amended.	March 27, 2007
10.7+			

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	<u>2006 Equity Incentive Plan—Form of Notice of Stock Option Grant and Stock Option Agreement.</u>	Filed as Exhibit 99.5 to the Registration Statement on Form S-8.	August 14, 2007
10.12†	<u>Ground Lease dated November 3, 2006 among the Registrant, Clean Energy Construction and U.S. Borax, Inc.</u>	Filed as Exhibit 10.25 to the Registration Statement on Form S-1, as amended.	May 24, 2007
10.16+	<u>2006 Equity Incentive Plan—Form of Stock Award Agreement.</u>	Filed as Exhibit 10.2 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2008.	May 15, 2008
10.63+	<u>Amended and Restated 2006 Equity Incentive Plan.</u>	Filed as Exhibit 10.63 to the Annual Filing on Form 10-K for the fiscal year ended 2011.	March 12, 2012
10.64+	<u>Amended and Restated 2006 Equity Incentive Plan—Form of Notice of Stock Unit Award and Stock Unit Agreement.</u>	Filed as Exhibit 10.64 to the Annual Filing on Form 10-K for the fiscal year ended 2011.	March 12, 2012
10.80	<u>Lease dated March 18, 2013, between The Irvine Company LLC and Clean Energy.</u>	Filed as Exhibit 10.80 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2013.	May 8, 2013

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Exhibit Number	Description	Incorporated herein by reference to the following filings: Form	Filed on
10.81	<u>First Amendment to Lease dated April 17, 2013, between The Irvine Company LLC and Clean Energy.</u>	Filed as Exhibit 10.81 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2013.	May 8, 2013
10.83	<u>Note Purchase Agreement dated June 14, 2013, among the Registrant, Chesapeake NG Ventures Corporation, Boone Pickens and Green Energy Investment Holdings, LLC.</u>	Filed as Exhibit 10.83 to the Current Report on Form 8-K.	June 18, 2013
10.84	<u>Loan Agreement dated June 14, 2013, between the Registrant and Green Energy Investment Holdings, LLC.</u>	Filed as Exhibit 10.84 to the Current Report on Form 8-K.	June 18, 2013
10.85	<u>Loan Agreement dated June 14, 2013, between the Registrant and Boone Pickens.</u>	Filed as Exhibit 10.85 to the Current Report on Form 8-K.	June 18, 2013
10.86	<u>Registration Rights Agreement dated June 14, 2013, among the Registrant, Boone Pickens and Green Energy Investment Holdings, LLC.</u>	Filed as Exhibit 10.86 to the Current Report on Form 8-K.	June 18, 2013
10.87	<u>Marketing Agreement dated June 28, 2013, among Clean Energy, Westport Power Inc. and Westport Fuel Systems Inc.</u>	Filed as Exhibit 10.87 to the Current Report on Form 8-K.	June 28, 2013
10.90+	<u>Clean Energy Fuels Corp. Employee Stock Purchase Plan.</u>	Filed as Exhibit Annex A to Schedule 14A Definitive Proxy Statement.	March 28, 2013
10.92†	<u>Liquefied Natural Gas Fueling Station and LNG Master Sales Agreement dated August 2, 2010, between Clean Energy and Pilot Travel Centers, LLC.</u>	Filed as Exhibit 10.92 to the Annual Report on Form 10-K for the year ended December 31, 2013.	February 27, 2014
10.94	<u>Form of Common Unit Purchase Agreement dated October 14, 2014, among NG Advantage, LLC, Clean Energy and the other investors named therein.</u>	Filed as Exhibit 10.94 to the Current Report on Form 8-K.	October 15, 2014
10.103+	<u>Amended and Restated 2006 Equity Incentive Plan - Form of Notice of Stock Unit Award.</u>	Filed as Exhibit 10.103 to the Quarterly Report on Form 10 Q for the quarter ended March 30, 2015.	May 11, 2015
10.104+	<u>2006 Equity Incentive Plan - Form of Notice of Stock Option Grant.</u>	Filed as Exhibit 10.104 to the Quarterly Report on Form 10 Q for the quarter ended March 30, 2015.	May 11, 2015

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10.105+	<u>Employment Agreement dated May 1, 2015 between the Registrant and Robert M. Vreeland.</u>	Filed as Exhibit 10.105 to the Quarterly Report on Form 10 Q for the quarter ended March 30, 2015.	May 11, 2015
10.106+	<u>Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Andrew J. Littlefair.</u>	Filed as Exhibit 10.106 to the Current Report on Form 8 K.	December 31, 2015
10.107+	<u>Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Robert M. Vreeland.</u>	Filed as Exhibit 10.107 to the Current Report on Form 8 K.	December 31, 2015
10.108+	<u>Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Mitchell W. Pratt.</u>	Filed as Exhibit 10.108 to the Current Report on Form 8 K.	December 31, 2015



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Exhibit Number	Description	Incorporated herein by reference to the following filings: Form	Filed on
10.109+	<u>Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Barclay F. Corbus.</u>	Filed as Exhibit 10.109 to the Current Report on Form 8 K.	December 31, 2015
10.110+	<u>Amended and Restated Employment Agreement dated December 31, 2015, between the Registrant and Peter J. Grace.</u>	Filed as Exhibit 10.110 to the Current Report on Form 8 K.	December 31, 2015
10.111	<u>Promissory Note dated February 29, 2016, between the Registrant, Clean Energy and PlainsCapital Bank.</u>	Filed as Exhibit 10.111 to the Annual Report on Form 10-K for the year ended December 31, 2015.	March 3, 2016
10.112	<u>Pledged Account Agreement dated February 29, 2016, between Clean Energy, PlainsCapital Bank and PlainsCapital Bank - Wealth Management and Trust.</u>	Filed as Exhibit 10.112 to the Annual Report on Form 10-K for the year ended December 31, 2015.	March 3, 2016
10.113	<u>Loan and Security Agreement dated February 29, 2016, between the Registrant, Clean Energy and PlainsCapital Bank.</u>	Filed as Exhibit 10.113 to the Annual Report on Form 10-K for the year ended December 31, 2015.	March 3, 2016
10.114+	<u>Clean Energy Fuels Corp. 2016 Performance Incentive Plan.</u>	Filed as Exhibit 10.114 to the Current Report on Form 8-K.	May 27, 2016
10.115	<u>Form of 7.5% Notes Exchange Agreement.</u>	Filed as Exhibit 10.115 to the Current Report on Form 8-K.	July 15, 2016
10.116	<u>Form of 5.25% Notes Exchange Agreement.</u>	Filed as Exhibit 10.116 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2016.	August 9, 2016
10.117+	<u>Clean Energy Fuels Corp. 2016 Performance Incentive Plan-Form of Notice of Stock Option Grant and Terms and Conditions of Nonqualified Stock Option.</u>	Filed as Exhibit 10.117 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2016.	August 9, 2016
10.118+	<u>Clean Energy Fuels Corp. 2016 Performance Incentive Plan-Form of Notice of Stock Unit Award and Terms and Conditions of Stock Unit Award.</u>	Filed as Exhibit 10.118 to the Quarterly Report on Form 10-Q for the quarter ended June 30, 2016.	August 9, 2016
10.119			

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	<u>Loan Modification Agreement dated October 31, 2016, between the Registrant, Clean Energy and PlainsCapital Bank.</u>	Filed as Exhibit 10.116 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2016.	November 3, 2016
10.120	<u>Note Repurchase Agreement dated February 6, 2017, by and between the Registrant and T. Boone Pickens.</u>	Filed as Exhibit 10.119 to the Current Report on Form 8-K.	February 6, 2017
10.121+	<u>Form of Option Surrender Agreement.</u>	Filed as Exhibit 10.120 to the Quarterly Report on Form 10-Q for the quarter ended March 31, 2017.	May 4, 2017
10.122	<u>Contribution Agreement dated July 14, 2017, by and between Clean Energy and NG Advantage LLC.</u>	Filed as Exhibit 10.121 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017.	November 2, 2017
10.123	<u>Series A Preferred Units Issuance Agreement dated July 14, 2017, by and between Clean Energy and NG Advantage LLC.</u>	Filed as Exhibit 10.122 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017.	November 2, 2017

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Exhibit Number	Description	Incorporated herein by reference to the following filings: Form	Filed on
10.124+	<u>Retirement Agreement dated September 15, 2017, by and between the registrant and Peter J. Grace.</u>	Filed as Exhibit 10.123 to the Quarterly Report on Form 10-Q for the quarter ended September 30, 2017.	November 2, 2017
21.1**	<u>Subsidiaries.</u>		
23.1**	<u>Consent of Independent Registered Public Accounting Firm KPMG LLP.</u>		
24.1**	<u>Power of Attorney (included on the signature to the Original Annual Report).</u>		
31.1**	<u>Certification of Andrew J. Littlefair, President and Chief Executive Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.</u>		
31.2**	<u>Certification of Robert M. Vreeland, Chief Financial Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>		
31.3*	<u>Certification of Andrew J. Littlefair, President and Chief Executive Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.</u>		
31.4*	<u>Certification of Robert M. Vreeland, Chief Financial Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>		
32.1**	<u>Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, executed by Andrew J. Littlefair, President and Chief Executive Officer, and Robert M. Vreeland Chief Financial Officer.</u>		
99.1	<u>Natural Gas Hedge Policy dated May 29, 2008.</u>	Filed as Exhibit 99.1 to the Current Report on Form 8-K.	June 20, 2008
101**	The following materials from the Company's Annual Report on Form 10-K for the year ended December 31, 2017, formatted in XBRL (eXtensible Business Reporting Language):		

- (i) Consolidated Balance Sheets;
- (ii) Consolidated Statements of Operations;
- (iii) Consolidated Statements of Comprehensive Income (Loss);
- (iv) Consolidated Statements of Stockholders' Equity;
- (v) Consolidated Statements of Cash Flows; and
- (vi) Notes to Consolidated Financial Statements.

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§ Schedules and exhibits omitted pursuant to Item 601(b)(2) of Regulation S-K promulgated by the SEC. The registrant agrees to furnish a supplemental copy of any omitted schedules or exhibits to the SEC upon request.

† Portions of this exhibit have been omitted pursuant to the grant of a request for confidential treatment and the non-public information has been filed separately with the SEC.

\* Filed herewith.

\*\* Previously filed or furnished, as applicable, as the same-numbered exhibit to the Original Annual Report.

+ Management contract or compensatory plan or arrangement.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

CLEAN ENERGY FUELS CORP.

By: /s/ ANDREW J. LITTLEFAIR

Andrew J. Littlefair

President and Chief Executive Officer

Date: April 13, 2018