Vertex Energy Annual Report 2021

Form 10-K (NASDAQ:VTNR)

Published: March 9th, 2021

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2020

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

FOR THE TRANSITION PERIOD FROM _____________ TO _____________

Commission File Number **001-11476**

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VERTEX ENERGY, INC.
(Exact name of registrant as specified in its charter)

Nevada	**94-3439569**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*
1331 Gemini Street, SUITE 250, Houston, Texas	**77058**
(Address of principal executive offices)	*(Zip Code)*

Registrant's telephone number, including area code: **866-660-8156**

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

Title of each class	Trading Symbols(s)	Name of each exchange on which registered
Common Stock, $0.001 Par Value Per Share	VTNR	The NASDAQ Stock Market LLC (Nasdaq Capital 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 x

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 x

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 every Interactive Data File required to be submitted 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 such files). Yes x No ¨

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a 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.

Large accelerated filer o	**Accelerated filer** o
Non-accelerated filer x	**Smaller reporting company** ☒
	Emerging growth ☐

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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ¨

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold as of the last business day of the registrant's most recently completed second fiscal quarter was approximately $26,644,057. For purposes of calculating the aggregate market value of shares held by non-affiliates, we have assumed that all outstanding shares are held by non-affiliates, except for shares held by each of our executive officers, directors and 5% or greater stockholders. In the case of 5% or greater stockholders, we have not deemed such stockholders to be affiliates unless there are facts and circumstances which would indicate that such stockholders exercise any control over our company, or unless they hold 10% or more of our outstanding common stock. These assumptions should not be deemed to constitute an admission that all executive officers, directors and 5% or greater stockholders are, in fact, affiliates of our company, or that there are not other persons who may be deemed to be affiliates of our company. Further information concerning shareholdings of our officers, directors and principal stockholders is included or incorporated by reference in Part III, Item 12 of this Annual Report on Form 10-K.

State the number of shares of the issuer's common stock outstanding, as of the latest practicable dat e: 49,888,947 shares of common stock issued and outstanding as of March 8, 2021. On January 26, 2021, a holder of the issuer's Series B Convertible Preferred Stock and Series B1 Convertible Preferred Stock, converted 420,224 shares of Series B Convertible Preferred Stock and 1,103,297 shares of Series B1 Convertible Preferred Stock into common stock, on a one-for-one basis, pursuant to the terms of such securities; on February 3, 2021, a warrant holder exercised warrants to purchase 98,537 shares of common stock, and paid the $150,762 exercise price in connection with such exercise to the issuer; and on March 1, 2021, a holder of the issuer's Series B Preferred Stock agreed to exchange 708,547 shares of Series B Convertible Preferred Stock, which had an aggregate liquidation preference of $2,196,496 ($3.10 per share), for 1,098,248 shares of the issuer's common stock. All of such issuances are still in process and all such shares of common stock have not been formally issued as of the date of this Report, and such conversions, exercise, exchange and issuances, have not been reflected in the number of outstanding securities of the issuer disclosed herein, as a result.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement relating to its 2021 annual meeting of shareholders (the " 2021 Proxy Statement") are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. The 2021 Proxy Statement will be filed with the U.S. Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

FORM 10-K
FOR THE FISCAL YEAR ENDED DECEMBER 31, 2020
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PART I

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

This Report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. In some cases, you can identify forward-looking statements by the following words: "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "ongoing," "plan," "potential," "predict," "project," "should," or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. Forward-looking statements are not a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Forward-looking statements are based on information available at the time the statements are made and involve known and unknown risks, uncertainties and other factors that may cause our results, levels of activity, performance or achievements to be materially different from the information expressed or implied by the forward-looking statements in this Report. These factors include:

- risks associated with our outstanding credit facilities, including amounts owed, restrictive covenants, security interests thereon and our ability to repay such facilities and amounts due thereon when due;
- risks associated with our outstanding preferred stock, including redemption obligations in connection therewith, restrictive covenants and our ability to redeem such securities pursuant to the terms of such securities and applicable law;
- the level of competition in our industry and our ability to compete;
- our ability to respond to changes in our industry;
- the loss of key personnel or failure to attract, integrate and retain additional personnel;
- our ability to protect our intellectual property and not infringe on others' intellectual property;
- our ability to scale our business;
- our ability to maintain supplier relationships and obtain adequate supplies of feedstocks;
- our ability to obtain and retain customers;
- our ability to produce our products at competitive rates;
- our ability to execute our business strategy in a very competitive environment;
- trends in, and the market for, the price of oil and gas and alternative energy sources;
- our ability to maintain our relationships with KMTEX and Bunker One (USA) Inc;
- the impact of competitive services and products;
- our ability to integrate acquisitions;
- our ability to complete future acquisitions;
- our ability to maintain insurance;
- potential future litigation, judgments and settlements;
- rules and regulations making our operations more costly or restrictive, including IMO 2020 (defined below);
- changes in environmental and other laws and regulations and risks associated with such laws and regulations;
- economic downturns both in the United States and globally;

- risk of increased regulation of our operations and products;
- negative publicity and public opposition to our operations;
- disruptions in the infrastructure that we and our partners rely on;
- an inability to identify attractive acquisition opportunities and successfully negotiate acquisition terms;
- our ability to effectively integrate acquired assets, companies, employees or businesses;
- liabilities associated with acquired companies, assets or businesses;
- interruptions at our facilities;
- unexpected changes in our anticipated capital expenditures resulting from unforeseen required maintenance, repairs, or upgrades;
- our ability to acquire and construct new facilities;
- certain events of default which have occurred under our debt facilities and previously been waived;
- prohibitions on borrowing and other covenants of our debt facilities;
- our ability to effectively manage our growth;
- decreases in global demand for, and the price of, oil, due to COVID-19, state, federal and foreign responses thereto;
- our ability to acquire sufficient amounts of used oil feedstock through our collection routes, to produce finished products, and in the absence of such internally collected feedstocks, our ability to acquire third-party feedstocks on commercially reasonable terms;
- risks associated with COVID-19, the global efforts to stop the spread of COVID-19, potential downturns in the U.S. and global economies due to COVID-19 and the efforts to stop the spread of the virus, and COVID-19 in general;
- repayment of and covenants in our debt facilities;
- the lack of capital available on acceptable terms to finance our continued growth; and
- other risk factors included under "Risk Factors" in this Report.

You should read the matters described in "Risk Factors" and the other cautionary statements made in this Report as being applicable to all related forward-looking statements wherever they appear in this Report. We cannot assure you that the forward-looking statements in this Report will prove to be accurate and therefore prospective investors are encouraged not to place undue reliance on forward-looking statements. Other than as required by law, we undertake no obligation to update or revise these forward-looking statements, even though our situation may change in the future.

Please see the definitions below, and the "Glossary of Selected Terms" incorporated by reference as Exhibit 99.1 hereto, for a list of abbreviations and definitions used throughout this report.

In this Annual Report on Form 10-K, we may rely on and refer to information regarding the refining, re-refining, used oil and oil and gas industries in general from market research reports, analyst reports and other publicly available information. Although we believe that this information is reliable, we cannot guarantee the accuracy and completeness of this information, and we have not independently verified any of it.

Our fiscal year ends on December 31st. Interim results are presented on a quarterly basis for the quarters ended March 31, June 30, and September 30th, the first quarter, second quarter and third quarter, respectively, with the quarter ending December 31st being referenced herein as our fourth quarter. Fiscal 2020 means the year ended December 31, 2020, whereas fiscal 2019 means the year ended December 31, 2019.

Unless the context requires otherwise, references to the " Company," "we," "us," "our," "Vertex," "Vertex Energy" and " Vertex Energy, Inc. " refer specifically to Vertex Energy, Inc. and its consolidated subsidiaries.

In addition, unless the context otherwise requires and for the purposes of this report only:

“Base Oil” means the lubrication grade oils initially produced from refining crude oil (mineral base oil) or through chemical synthesis (synthetic base oil). In general, only 1% to 2% of a barrel of crude oil is suitable for refining into base oil. The majority of the barrel is used to produce gasoline and other hydrocarbons;

“Cutterstock” means fuel oil used as a blending agent added to other fuels. For example, to lower viscosity;

“Crack” means breaking apart crude oil into its component products, including gases like propane, heating fuel, gasoline, light distillates like jet fuel, intermediate distillates like diesel fuel and heavy distillates like grease;

"Exchange Act" refers to the Securities Exchange Act of 1934, as amended;

"Feedstock” means a product or a combination of products derived from crude oil and destined for further processing in the refining or re-refining industries. It is transformed into one or more components and/or finished products;

“Gasoline Blendstock” means naphthas and various distillate products used for blending or compounding into finished motor gasoline. These components can include reformulated gasoline blendstock for oxygenate blending (RBOB) but exclude oxygenates (alcohols and ethers), butane, and pentanes (an organic compound with properties similar to a butane);

“Hydrotreating” means the process of reacting oil fractions with hydrogen in the presence of a catalyst to produce high-value clean products;

“IMO 2020” effective January 1, 2020, the International Maritime Organization (IMO) mandated a maximum sulphur content of 0.5% in marine fuels globally;

“MDO” means marine diesel oil, which is a type of fuel oil and is a blend of gasoil and heavy fuel oil, with less gasoil than intermediate fuel oil used in the maritime field;

“Naphthas” means any of various volatile, highly flammable liquid hydrocarbon mixtures used chiefly as solvents and diluents and as raw materials for conversion to gasoline;

“Pygas” means pyrolysis gasoline, an aromatics-rich gasoline stream produced in sizeable quantities by an ethylene plant. These plants are designed to crack a number of feedstocks, including ethane, propane, naphtha, and gasoil. Pygas can serve as a high-octane blendstock for motor gasoline or as a feedstock for an aromatics extraction unit;

"SEC" or the " Commission" refers to the United States Securities and Exchange Commission;

"Securities Act" refers to the Securities Act of 1933, as amended; and

"VGO" refers to Vacuum Gas Oil (also known as cat feed) - a feedstock for a fluid catalytic cracker typically found in a crude oil refinery and used to make gasoline No. 2 oil and other byproducts.

Summary Risk Factors

We face risks and uncertainties related to our business, many of which are beyond our control. In particular, risks associated with our business include:

- our need for additional funding, the availability of, and terms of, such funding;
- risks associated with our outstanding credit facilities, including amounts owed, restrictive covenants, security interests thereon and our ability to repay such facilities and amounts due thereon when due;
- risks associated with our outstanding preferred stock, including the liquidation preference associated therewith, redemption obligations in connection therewith, restrictive covenants and our ability to redeem such securities when required pursuant to the terms of such securities and applicable law;
- the level of competition in our industry and our ability to compete;
- the supply and demand for oil and used oil, as well as used oil feed stocks and the price of oil and the feedstocks we use in our operations, process and sell;
- the availability of used oil feedstocks;
- our economics of using TCEP for its intended purpose;
- the outcome of natural disasters, hurricanes, floods, war, terrorist attacks, fires and other events negatively impacting our facilities and operations;
- our ability to respond to changes in our industry;
- the loss of key personnel or failure to attract, integrate and retain additional personnel;
- our ability to protect our intellectual property and not infringe on others' intellectual property;
- our ability to scale our business;
- our ability to maintain supplier relationships and obtain adequate supplies of feedstocks;
- our ability to obtain and retain customers;
- our ability to produce our products at competitive rates;
- our ability to execute our business strategy in a very competitive environment;
- trends in, and the market for, the price of oil and gas and alternative energy sources;
- our ability to maintain our relationship with KMTEX and Bunker One (USA) Inc.;
- the impact of competitive services and products;
- our ability to integrate acquisitions;
- our ability to complete future acquisitions;
- our ability to maintain insurance;
- potential future litigation, judgments and settlements;

- risk of increased regulation of our operations and products and rules and regulations making our operations more costly or restrictive, including IMO 2020;
- changes in environmental and other laws and regulations and risks associated with such laws and regulations;
- economic downturns both in the United States and globally;
- negative publicity and public opposition to our operations;
- disruptions in the infrastructure that we and our partners rely on;
- an inability to identify attractive acquisition opportunities and successfully negotiate acquisition terms;
- our ability to effectively integrate acquired assets, companies, employees or businesses;
- liabilities associated with acquired companies, assets or businesses;
- unexpected changes in our anticipated capital expenditures resulting from unforeseen required maintenance, repairs, or upgrades;
- certain events of default which have occurred under our debt facilities and previously been waived;
- prohibitions on borrowing and other covenants of our debt facilities;
- our ability to effectively manage our growth;
- the costs of required insurance, our lack of insurance, or claims not covered by our insurance;
- the redemptive rights of our agreements with partners;
- our lack of effective disclosure controls and procedures and internal control over financial reporting;
- loss of our ability to use net operating loss carry-forwards;
- quarterly changes in the carrying values of our preferred stock and warrants due to fluctuations in our stock price and other matters;
- improvements in alternative energy sources and technologies;
- decreases in global demand for, and the price of, oil, due to COVID-19, state, federal and foreign responses thereto;
- our ability to acquire sufficient amounts of used oil feedstock through our collection routes, to produce finished products, and in the absence of such internally collected feedstocks, our ability to acquire third-party feedstocks on commercially reasonable terms;
- risks associated with COVID-19, the global efforts to stop the spread of COVID-19, potential downturns in the U.S. and global economies due to COVID-19 and the efforts to stop the spread of the virus, and COVID-19 in general;
- the sporadic and volatile nature of the market for our common stock;
- our ability to maintain the listing of our common stock on The Nasdaq Capital Market; and
- dilution caused by new equity offerings, the exercise of warrants and/or the conversion of outstanding preferred stock.

Where You Can Find Other Information

We file annual, quarterly, and current reports, proxy statements and other information with the Securities and Exchange Commission ("SEC"). Our SEC filings are available to the public over the Internet at the SEC's website at www.sec.gov and are available for download, free of charge, soon after such reports are filed with or furnished to the SEC, on the "Investor Relations," "SEC Filings" page of our website at www.vertexenergy.com. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC like us at http://www.sec.gov. Our internet address is www.vertexnergy.com. Information on our website is not part of this Report, and we do not desire to incorporate by reference such information herein. Copies of documents filed by us with the SEC are also available from us without charge, upon oral or written request to our Secretary, who can be contacted at the address and telephone number set forth on the cover page of this Report.

Item 1. Business

Corporate History:

We were formed as a Nevada corporation on May 14, 2008. Pursuant to an Amended and Restated Agreement and Plan of Merger dated May 19, 2008, by and between Vertex Holdings, L.P. (formerly Vertex Energy, L.P.), a Texas limited partnership (" Holdings"), us, World Waste Technologies, Inc., a California corporation ("WWT" or "World Waste"), Vertex Merger Sub, LLC, a California limited liability company and our wholly-owned subsidiary ("Merger Subsidiary"), and Benjamin P. Cowart, our Chief Executive Officer, as agent for our shareholders (as amended from time to time, the " Merger Agreement"). Effective on April 16, 2009, World Waste merged with and into Merger Subsidiary, with Merger Subsidiary continuing as the surviving corporation and becoming our wholly-owned subsidiary (the "Merger"). In connection with the Merger, (i) each outstanding share of World Waste common stock was cancelled and exchanged for 0.10 shares of our common stock; (ii) each outstanding share of World Waste Series A preferred stock was cancelled and exchanged for 0.4062 shares of our Series A preferred stock; and (iii) each outstanding share of World Waste Series B preferred stock was cancelled and exchanged for 11.651 shares of our Series A preferred stock.

Additionally, as a result of the Merger, as the successor entity of World Waste, we assumed World Waste's filing obligations with the Securities and Exchange Commission and our common stock began trading on the Over-The-Counter Bulletin Board under the symbol "VTNR.OB" effective May 4, 2009. Subsequently, effective February 13, 2013, our common stock began trading on The NASDAQ Capital Market under the symbol "VTNR", where it has continued to trade.

Prior Material Acquisitions and Transactions

Vertex Holdings Acquisition

Effective as of August 31, 2012, we acquired 100% of the outstanding equity interests of Vertex Acquisition Sub, LLC (" Acquisition Sub"), a special purpose entity consisting of substantially all of the assets of Holdings and real-estate properties of B & S Cowart Family L.P. ("B&S LP" and the "Acquisition"). Prior to closing the Acquisition, Holdings contributed to Acquisition Sub substantially all of its assets and liabilities relating to the business of transporting, storing, processing and re-refining petroleum products, crudes and used lubricants, including all of the outstanding equity interests in Holdings' wholly-owned operating subsidiaries, Cedar Marine Terminals, L.P. (" CMT" or "Cedar Marine Terminals"), which operates a 19-acre bulk liquid storage facility and terminal on the Houston Ship Channel, which serves as a truck-in, barge-out facility and provides throughput terminal operations and which terminal is also the site of our proprietary, patented, Thermal Chemical Extraction Process ("TCEP") (described below); Crossroad Carriers, L.P. ("Crossroad") is a common carrier that provides transportation and logistical services for liquid petroleum products, as well as other hazardous materials and product streams; Vertex Recovery, L.P. (" Vertex Recovery"), is a generator solutions company for the recycling and collection of used oil and oil-related residual materials from large regional and national customers throughout the U.S. and Canada, which it facilitates through a network of independent recyclers and franchise collectors; and H&H Oil, L.P. ("H&H Oil"), which collects and recycles used oil and residual materials from customers based in Austin, Baytown, Dallas, San Antonio and Corpus Christi, Texas and B&S LP contributed real estate associated with the operations of H&H Oil.

Benjamin P. Cowart, our Chief Executive Officer, President, Chairman and largest shareholder directly or indirectly owned a 77% interest in Holdings and a 100% interest in B&S LP at the time of the acquisition. Additionally, Chris Carlson, our Chief Financial Officer, owned a 10% interest in Holdings at the time of the acquisition.

Omega Refining Acquisition

In May, 2014, we acquired certain of the assets of Omega Refining, LLC (" Omega Refining"), Bango Refining NV, LLC (" Bango Refining") and Omega Holdings Company LLC ("Omega Holdings" and collectively with Omega Refining and Bango Refining, " Omega" or the "sellers") related to (1) the operation of oil re-refineries and, in connection therewith, purchasing used lubricating oils and re-refining such oils into processed oils and other products for the distribution, supply and sale to end-customers and (2) the provision of related products and support services. The assets included Omega's Marrero, Louisiana plant which produces vacuum gas oil (VGO) and a Bango, Nevada plant which produces base lubricating oils. We acquired the assets in the name of our indirect wholly-owned subsidiary, Vertex Refining LA, LLC. The assets and operations acquired from Omega fall under our Black Oil segment. Bango Refining operations were sold in January 2016.

Heartland Acquisition