

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

Vertex Energy Inc.

Form: 8-K

Date Filed: 2020-12-01

Corporate Issuer CIK: 890447

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): November 27, 2020

VERTEX ENERGY, INC.

(Exact name of registrant as specified in its charter)

Nevada

001-11476

94-3439569

(State or other jurisdiction of incorporation)

(Commission File Number)

(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

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))

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

Title of each class	Trading Symbol(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)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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.

Item 1.01 Entry into a Material Definitive Agreement.

Credit Agreement Amendment

On November 27, 2020, Vertex Energy, Inc. (the “Company”, “we” and “us”), Vertex Energy Operating, LLC, the Company’s wholly-owned subsidiary (“Vertex Operating”), Encina Business Credit, LLC, as agent (the “Agent”) for the lenders’ party thereto (the “Lenders”), and the Lenders, entered into a Fifth Amendment and Limited Waiver to Credit Agreement (the “Amendment and Waiver”), pursuant to which the Lenders agreed to amend that certain ABL Credit Agreement dated as of February 1, 2017, as amended to date (the “Revolving Credit Agreement”).

The Amendment and Waiver:

- (1) Provided for the Lender’s waiver of an event of default which occurred under the Revolving Credit Agreement, relating solely to the Company exceeding the \$3 million capital expenditure limitation for 2020 set forth in the Revolving Credit Agreement;
- (2) Amended the capital expenditure limit set forth in the Revolving Credit Agreement to \$4 million for 2020 (compared to \$3 million previously) and \$3 million thereafter; and
- (3) Amended the minimum required availability under the Revolving Credit Agreement to be \$1 million prior to December 31, 2020 (which amount was previously \$2 million) and \$2 million thereafter.

Notwithstanding the technical default under the Revolving Credit Agreement discussed above, the Lenders did not take any action to accelerate amounts due under the Revolving Credit Agreement, such amounts due thereunder were not automatically accelerated in connection with the default, and as discussed above, such technical default was waived by the Lenders according to the Amendment and Waiver.

The foregoing description of the Amendment and Waiver does not purport to be complete and is qualified in its entirety by reference to the Amendment and Waiver, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosures regarding the Amendment and Waiver as set forth above in Item 1.01 are incorporated by reference in this Item 2.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
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10.1*	Fifth Amendment and Limited Waiver to Credit Agreement (ABL Credit Agreement), by and among Vertex Energy, Inc., Vertex Energy Operating, LLC, Encina Business Credit, LLC as Agent and the Lenders party thereto, dated November 27, 2020
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* Filed herewith.

SIGNATURES

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.

Date: December 1, 2020

VERTEX ENERGY, INC.

By: /s/ Chris Carlson
Chris Carlson
Chief Financial Officer

EXHIBIT INDEX

Exhibit No. Description

[10.1*](#) Fifth Amendment and Limited Waiver to Credit Agreement (ABL Credit Agreement), by and among Vertex Energy, Inc., Vertex Energy Operating, LLC, Encina Business Credit, LLC as Agent and the Lenders party thereto, dated November 27, 2020

* Filed herewith.

FIFTH AMENDMENT AND LIMITED WAIVER TO CREDIT AGREEMENT

THIS FIFTH AMENDMENT AND LIMITED WAIVER TO CREDIT AGREEMENT (this "Agreement") is entered into as of November 27, 2020 by and among VERTEX ENERGY, INC., a Nevada corporation ("Parent"), VERTEX ENERGY OPERATING, LLC, a Texas limited liability company (the "Lead Borrower"), the other Borrowers signatory hereto, ENCINA BUSINESS CREDIT, LLC, as Agent, and the Lenders signatory hereto.

W I T N E S E T H:

WHEREAS, Parent, the Lead Borrower, the other Loan Parties, Agent and the Lenders from time to time party thereto are parties to that certain ABL Credit Agreement dated as of February 1, 2017 (as amended prior to the date hereof and as it may be further amended, restated, supplemented or modified from time to time, the "Credit Agreement"; unless otherwise defined herein, capitalized terms used herein that are not otherwise defined herein shall have the respective meanings assigned to such terms in the Credit Agreement); and

WHEREAS, the Loan Parties have requested that the Agent and Lenders (a) waive an Event of Default arising under Section 7.15 of the Credit Agreement and (b) amend certain provisions of the Credit Agreement, and subject to the satisfaction of the conditions set forth herein, the Agent and the Lenders signatory hereto are willing to do so, on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

1. Limited Waiver. The Borrowers acknowledge that an Event of Default exists as a result of the Borrowers exceeding the Capital Expenditures limitation for the 2020 Fiscal Year as set forth in Section 7.15 of the Credit Agreement (herein, the "Existing Default"). Upon satisfaction of the conditions set forth in Section 3 hereof, the Agent and Lenders hereby waive the Existing Default. The execution and delivery of this Agreement does not (i) constitute a waiver of any term or provision of any of the Loan Documents or (ii) constitute a waiver by any Lender or the Agent of any Default or Event of Default (other than the Existing Default) now existing or hereafter occurring.

2. Amendments to Credit Agreement. Upon satisfaction of the conditions set forth in Section 3 hereof, the Credit Agreement is hereby amended as follows:

(a) Section 7.15 of the Credit Agreement is hereby amended by amending and restating the table set forth therein to read as follows:

Fiscal Year	Capital Expenditures
2020	\$4,000,000
2021 and thereafter	\$3,000,000

(b) Section 7.16 of the Credit Agreement is hereby amended and restated to read as follows:

“7.16 Minimum Availability. Permit Availability at any time to be less than (a) \$1,000,000 at any time on or prior to December 31, 2020 and (b) \$2,000,000 at any time from and after January 1, 2021.”

3. Conditions. The effectiveness of this Agreement is subject to the satisfaction of the following conditions precedent:

- a. the execution and delivery of this Agreement by each Loan Party, Agent and the Lenders; and
- b. the truth and accuracy of the representations and warranties contained in Section 4 hereof.

4. Representations and Warranties. Each Loan Party hereby represents and warrants to Agent and each Lender as follows:

a. the execution, delivery and performance by such Loan Party of this Agreement has been duly authorized by all necessary corporate or other organizational action, and does not and will not (a) contravene the terms of any of such Person’s Organization Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (i) any Material Contract or any Material Indebtedness to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; (c) result in or require the creation of any Lien upon any asset of such Loan Party (other than Liens in favor of the Agent under the Security Documents); or (d) violate any Law;

b. such Loan Party has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the Credit Agreement, as amended hereby;

c. this Agreement constitutes a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

d. after giving effect to this Agreement and the transactions contemplated hereby, each of the representations and warranties of such Loan Party contained herein, in Article V of the Credit Agreement or in any other Loan Document are true and correct in all material respects on and as of the date hereof, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) in the case of any representation and warranty qualified by materiality, they shall be true and correct in all respects and (iii) for purposes of this Section 4(d), the representations and warranties contained in subsections (a) and (b) of Section 5.05 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 of the Credit Agreement; and

e. after giving effect to this Agreement (including the waiver set forth herein), no Default or Event of Default has occurred and is continuing or would result from the transactions contemplated hereby.

5. No Modification. Except as expressly set forth herein, nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Credit Agreement or any of the other Loan Documents or constitute a course of conduct or dealing among the parties. Except as expressly stated herein, the Agent and Lenders reserve all rights, privileges and remedies under the Loan Documents. Except as amended or consented to hereby, the Credit Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Credit Agreement shall be deemed to be references to the Credit Agreement as modified hereby. This Agreement shall constitute a Loan Document.

6. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, pdf or other electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement.

7. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Agent and each Lender.

8. Governing Law. This Agreement and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the law of the State of Illinois.

9. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10. Section Headings. Section headings herein are included for convenience of reference only and shall not affect the interpretation of this Agreement.

11. Reaffirmation. Each of the Loan Parties as debtor, grantor, pledgor, guarantor, assignor, or in other any other similar capacity in which such Loan Party grants liens or security interests in its property or otherwise acts as accommodation party or guarantor, as the case may be, hereby (i) ratifies and reaffirms all of its payment and performance obligations, contingent or otherwise, under each of the Loan Documents to which it is a party (after giving effect hereto) and (ii) to the extent such Loan Party granted liens on or security interests in any of its property pursuant to any such Loan Document as security for or otherwise guaranteed the Borrower's Obligations under or with respect to the Loan Documents, ratifies and reaffirms such guarantee and grant of security interests and liens and confirms and agrees that such security interests and liens hereafter secure all of the Obligations as amended hereby. Each of the Loan Parties hereby consents to this Agreement and acknowledges that each of the Loan Documents remains in full force and effect and is hereby ratified and reaffirmed. The execution of this Agreement shall not operate as a waiver of any right, power or remedy of the Agent or Lenders, constitute a waiver of any provision of any of the Loan Documents or serve to effect a novation of the Obligations.

12. Release of Claims. In consideration of the Lenders' and the Agent's agreements contained in this Agreement, each Loan Party hereby irrevocably releases and forever discharges the Lenders and the Agent and their affiliates, subsidiaries, successors, assigns, directors, officers, employees, agents, consultants and attorneys (each, a "Released Person") of and from any and all claims, suits, actions, investigations, proceedings or demands, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law of any kind or character, known or unknown, which such Loan Party ever had or now has against Agent, any Lender or any other Released Person which relates, directly or indirectly, to any acts or omissions of Agent, any Lender or any other Released Person relating to the Credit Agreement or any other Loan Document on or prior to the date hereof.

[Signature pages follow.]

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date set forth above.

Lead Borrower:

VERTEX ENERGY OPERATING, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

Additional Borrowers:

BANGO OIL LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX REFINING NV, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX MERGER SUB, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX RECOVERY MANAGEMENT LA, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX REFINING LA, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX II GP, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: _____

VERTEX ACQUISITION SUB, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

CEDAR MARINE TERMINALS, LP

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX RECOVERY, L.P.

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

CROSSROAD CARRIERS, L.P.

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

H&H OIL, L.P.

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX RECOVERY MANAGEMENT, LLC

By: /s/ Chris Carlson
Name: Chris Carlson
Its: CFO

VERTEX ENERGY, INC., as Parent and as a Guarantor

By: /s/ Chris Carlson
Name: Chris Carlson
Title: CFO

[Signature Page to Fifth Amendment and Limited Waiver to Credit Agreement]

AGENT:

ENCINA BUSINESS CREDIT, LLC, as Agent

By: /s/ Daniel Ross
Name: Daniel Ross
Title: Its Duly Authorized Signatory

[Signature Page to Fifth Amendment and Limited Waiver to Credit Agreement]

ENCINA BUSINESS CREDIT SPV, LLC, as a Lender

By: /s/ Daniel Ross
Name: Daniel Ross
Title: Its Duly Authorized Signatory

[Signature Page to Fifth Amendment and Limited Waiver to Credit Agreement]
