

RSP Permian, Inc.
Form 425
March 28, 2018

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 27, 2018

RSP PERMIAN, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction

of incorporation)

001-36264
(Commission File Number)

3141 Hood Street, Suite 500 Dallas, Texas 75219

90-1022997
(I.R.S. Employer

Identification No.)

(Address of principal executive offices)

Registrant's telephone number, including area code: (214) 252-2700

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 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))

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.

Merger Agreement

On March 27, 2018, Concho Resources Inc., a Delaware corporation (*Concho*), entered into an Agreement and Plan of Merger (the *Merger Agreement*) with RSP Permian, Inc., a Delaware corporation (*RSP*), and Green Merger Sub Inc., a Delaware corporation and wholly owned subsidiary of Concho (*Merger Sub*), pursuant to which Merger Sub will merge with and into RSP (the *Merger*), with RSP surviving the Merger as a wholly owned subsidiary of Concho.

On the terms and subject to the conditions set forth in the Merger Agreement, upon consummation of the Merger, each share of RSP common stock, par value \$0.01 per share, issued and outstanding immediately prior to the effective time of the Merger (the *Effective Time*) (excluding certain Excluded Shares (as defined in the Merger Agreement)) shall be converted into the right to receive from Concho 0.320 fully-paid and nonassessable shares of common stock, par value \$0.001 per share, of Concho (*Concho Shares*).

The Merger Agreement contains customary representations and warranties of Concho and RSP relating to their respective businesses, financial statements and public filings, in each case generally subject to customary materiality qualifiers. Additionally, the Merger Agreement provides for customary pre-closing covenants of Concho and RSP, including covenants relating to conducting their respective businesses in the ordinary course and to refrain from taking certain actions without the other party's consent. The Merger Agreement also contains covenants of RSP not to solicit proposals relating to alternative transactions or, subject to certain exceptions, enter into discussions concerning or provide information in connection with alternative transactions and, subject to certain exceptions, to recommend that its stockholders adopt the Merger Agreement. The Merger Agreement also contains covenants of Concho not to solicit proposals relating to alternative transactions and, subject to certain exceptions, to recommend that its stockholders approve the issuance of Concho Shares in connection with the Merger.

The completion of the Merger is subject to certain customary mutual conditions, including (i) the receipt of the required approvals from RSP's and Concho's stockholders, (ii) the expiration or termination of the waiting period under the Hart-Scott-Rodino Act, (iii) the absence of any governmental order or law that makes consummation of the Merger illegal or otherwise prohibited, (iv) Concho's registration statement on Form S-4 having been declared effective by the SEC under the Securities Act of 1933, (v) Concho Shares issuable in connection with the Merger having been authorized for listing on the New York Stock Exchange, upon official notice of issuance, and (vi) the receipt by each party of a customary opinion that the Merger will qualify as a reorganization within the meaning of Section 368(a) of the U.S. tax code. The obligation of each party to consummate the Merger is also conditioned upon the other party's representations and warranties being true and correct (subject to certain materiality exceptions) and the other party having performed in all material respects its obligations under the Merger Agreement.

Prior to, but not after, the approval of the issuance of Concho Shares in connection with the Merger by Concho's stockholders, the board of directors of Concho (the *Concho Board*) may withhold, withdraw, qualify or modify its recommendation that Concho's stockholders approve the issuance of Concho Shares in connection with the Merger as result of a Parent Intervening Event (as defined in the Merger Agreement), if the Concho Board determines that the failure to make such a change of recommendation would be inconsistent with the fiduciary duties owed by the Concho Board to Concho's stockholders under applicable law, subject to complying with certain notice and other specified conditions, including giving RSP the opportunity to propose revisions to the terms of the Merger Agreement during a match right period and the payment of a termination fee in connection with such termination.

Prior to, but not after, the adoption of the Merger Agreement by RSP's stockholders, the board of directors of RSP (the *RSP Board*) may withhold, withdraw, qualify or modify its recommendation that RSP's stockholders adopt the Merger Agreement as result of a Company Superior Proposal or a Company Intervening Event (as each is defined in the Merger Agreement), if the RSP Board determines that the failure to make such a change of recommendation would be

inconsistent with the fiduciary duties owed by the RSP Board to RSP's stockholders under applicable law, subject to complying with certain notice and other specified conditions, including giving Concho the opportunity to propose revisions to the Merger Agreement during a match right period and the payment of a termination fee in connection with such termination.

The Merger Agreement contains termination rights for each of Concho and RSP, including, among others, if the consummation of the Merger does not occur on or before October 31, 2018 (the End Date). Upon termination of the Merger Agreement under specified circumstances, including the termination by RSP in the event of a change of recommendation by Concho Board, Concho would be required to pay RSP a termination fee of \$350 million. Upon termination of the Merger Agreement under specified circumstances, including, generally, the termination by Concho in the event of a change of recommendation by the RSP Board or by RSP to enter into an alternative acquisition agreement providing for a Company Superior Proposal, RSP would be required to pay Concho a termination fee of \$250 million.

Prior to the Effective Time, Concho is required to take all necessary corporate action so that upon and after the Effective Time, the size of Concho Board is increased by one member, and, prior to the consummation of the Merger, one member of the RSP Board (determined to be independent by Concho Board and mutually agreed upon between RSP and Concho) is appointed to Concho Board to fill the vacancy created by such increase. Concho is required to take all necessary action to nominate such director for election to Concho Board in the proxy statement relating to the first annual meeting of Concho's stockholders following the consummation of the Merger.

The foregoing description of the Merger Agreement and the transactions contemplated thereby in this Current Report on Form 8-K is only a summary and does not purport to be complete and is qualified by reference to the full text of the Merger Agreement, which is filed as Exhibit 2.1 hereto and incorporated by reference herein.

Item 5.01. Changes in Control of Registrant.

The information provided in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

No Offer or Solicitation

This communication relates to a proposed business combination transaction (the Transaction) between RSP and Concho. This communication is for informational purposes only and does not constitute an offer to sell or the solicitation of an offer to buy any securities or a solicitation of any vote or approval, in any jurisdiction, pursuant to the Transaction or otherwise, nor shall there be any sale, issuance, exchange or transfer of the securities referred to in this document in any jurisdiction in contravention of applicable law. No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Important Additional Information

In connection with the Transaction, Concho will file with the U.S. Securities and Exchange Commission (SEC) a registration statement on Form S-4, that will include a joint proxy statement of RSP and Concho and a prospectus of Concho. The Transaction will be submitted to RSP's stockholders and Concho's stockholders for their consideration. RSP and Concho may also file other documents with the SEC regarding the Transaction. The definitive joint proxy statement/prospectus will be sent to the stockholders of Concho and RSP. This document is not a substitute for the registration statement and joint proxy statement/prospectus that will be filed with the SEC or any other documents that Concho or RSP may file with the SEC or send to stockholders of Concho or RSP in connection with the Transaction. **INVESTORS AND SECURITY HOLDERS OF RSP AND CONCHO ARE URGED TO READ THE REGISTRATION STATEMENT AND THE JOINT PROXY STATEMENT/PROSPECTUS REGARDING THE TRANSACTION WHEN IT BECOMES AVAILABLE AND ALL OTHER RELEVANT DOCUMENTS THAT ARE FILED OR WILL BE FILED WITH THE SEC, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE TRANSACTION AND RELATED MATTERS.**

Investors and security holders will be able to obtain free copies of the registration statement and the joint proxy statement/prospectus (when available) and all other documents filed or that will be filed with the SEC by Concho or RSP through the website maintained by the SEC at <http://www.sec.gov>. Copies of documents filed with the SEC by RSP will be made available free of charge on RSP's website at <http://www.rsppermian.com>, under the heading SEC Filings, or by directing a request to Investor Relations, RSP Permian, Inc., 3141 Hood Street, Suite 500, Dallas, Texas 75219, Tel. No. (214) 252-2700. Copies of documents filed with the SEC by Concho will be made available free of charge on Concho's website at <http://www.concho.com/investors> or by directing a request to Investor Relations, Concho Resources Inc., One Concho Center, 600 West Illinois Avenue, Midland, Texas 79701, Tel. No. (432) 221-0477.

Participants in Solicitation

Concho, RSP and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies in respect to the Transaction.

Information regarding RSP's directors and executive officers is contained in the proxy statement for RSP's 2017 Annual Meeting of Stockholders filed with the SEC on April 28, 2017, and certain of its Current Reports on Form 8-K. You can obtain a free copy of this document at the SEC's website at <http://www.sec.gov> or by accessing RSP's website at <http://www.rsppermian.com>. Information regarding Concho's executive officers and directors is contained in the proxy statement for the Concho's 2017 Annual Meeting of Stockholders filed with the SEC on April 5, 2017 and certain of its Current Reports on Form 8-K. You can obtain a free copy of this document at the SEC's website at www.sec.gov or by accessing the Concho's website at <http://www.concho.com/investors>.

Investors may obtain additional information regarding the interests of those persons and other persons who may be deemed participants in the Transaction by reading the joint proxy statement/prospectus regarding the Transaction when it becomes available. You may obtain free copies of this document as described above.

Forward-Looking Statements and Cautionary Statements

This Current Report on Form 8-K (Form 8-K) may contain forward-looking statements, including certain plans, expectations, goals, projections and statements about the benefits of the Transaction, RSP's and Concho's plans, objectives, expectations and intentions, the expected timing of completion of the transaction, and other statements that are not historical facts. Such statements are subject to numerous assumptions, risks, and uncertainties. Statements that do not describe historical or current facts, including statements about beliefs and expectations, are forward-looking statements. The forward-looking statements are intended to be subject to the safe harbor provided by Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, and the Private Securities Litigation Reform Act of 1995. All statements, other than statements of historical fact, included in this communication that address activities, events or developments that Concho or RSP expects, believes or anticipates will or may occur in the future are forward-looking statements. Words such as estimate, project, predict, believe, expect, anticipate, potential, create, intend, could, may, foresee, plan, will, guidance, look, outlook, goal, future, focus, work, continue or the negative of such terms or other variations thereof and words and terms of similar substance used in connection with any discussion of future plans, actions, or events identify forward-looking statements. However, the absence of these words does not mean that the statements are not forward-looking. These forward-looking statements include, but are not limited to, statements regarding the Transaction, pro forma descriptions of the combined company and its operations, integration and transition plans, synergies, opportunities and anticipated future performance. There are a number of risks and uncertainties that could cause actual results to differ materially from the forward-looking statements included in this communication. These include the expected timing and likelihood of completion of the Transaction, including the timing, receipt and terms and conditions of any required governmental and regulatory approvals of the Transaction that could reduce anticipated benefits or cause the parties to abandon the Transaction, the ability to successfully integrate the businesses, the occurrence of any event,

change or other circumstances that could give rise to the termination of the merger agreement, the possibility that stockholders of Concho may not approve the issuance of new shares of common stock in the Transaction or that stockholders of RSP may not approve the merger agreement, the risk that the parties may not be able to satisfy the conditions to the Transaction in a timely manner or at all, risks related to disruption of management time from ongoing business operations due to the Transaction, the risk that any announcements relating to the Transaction could have adverse effects on the

market price of Concho's common stock or RSP's common stock, the risk that the Transaction and its announcement could have an adverse effect on the ability of Concho and RSP to retain customers and retain and hire key personnel and maintain relationships with their suppliers and customers and on their operating results and businesses generally, the risk the pending Transaction could distract management of both entities and they will incur substantial costs, the risk that problems may arise in successfully integrating the businesses of the companies, which may result in the combined company not operating as effectively and efficiently as expected, the risk that the combined company may be unable to achieve synergies or it may take longer than expected to achieve those synergies and other important factors that could cause actual results to differ materially from those projected. All such factors are difficult to predict and are beyond Concho's and RSP's control, including those detailed in Concho's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on its website at <http://www.concho.com> and on the SEC's website at <http://www.sec.gov>, and those detailed in RSP's annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K that are available on RSP's website at <http://www.rsppermian.com> and on the SEC's website at <http://www.sec.gov>.

Each of the forward-looking statements of Concho or RSP are based on assumptions that RSP or Concho, as applicable, believes to be reasonable but that may not prove to be accurate. Any forward-looking statement speaks only as of the date on which such statement is made, and RSP nor Concho undertakes any obligation to correct or update any forward-looking statement, whether as a result of new information, future events or otherwise, except as required by applicable law. Readers are cautioned not to place undue reliance on these forward-looking statements that speak only as of the date hereof.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

**Exhibit
No.**

Description

2.1 Agreement and Plan of Merger, dated as of March 27, 2018, among Concho, Merger Sub and RSP.

Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. RSP hereby undertakes to furnish supplemental copies of any of the omitted schedules upon request by the U.S. Securities and Exchange Commission.

SIGNATURES

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

RSP PERMIAN, INC.

Dated: March 28, 2018

By: /s/ James E. Mutrie
James E. Mutrie
General Counsel and Vice President