

SCIO DIAMOND TECHNOLOGY CORP

FORM 8-K (Current report filing)

Filed 05/20/13 for the Period Ending 05/20/13

Address	411 UNIVERSITY RIDGE, SUITE D GREENVILLE, SC 29601
Telephone	864.346.2733
CIK	0001488934
Symbol	SCIO
SIC Code	3290 - Abrasive, Asbestos, And Miscellaneous
Industry	Constr. - Supplies & Fixtures
Sector	Capital Goods
Fiscal Year	03/31

**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: **May 20, 2013**
(Date of earliest event reported)

SCIO DIAMOND TECHNOLOGY CORPORATION

(Exact name of registrant as specified in its charter)

Commission File Number: **333-166786**

Nevada
(State or other jurisdiction of incorporation)

45-3849662
(IRS Employer Identification No.)

**411 University Ridge Suite D
Greenville, SC 29601**
(Address of principal executive offices, including zip code)

(864) 751-4880
(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 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))
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Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

(a) On May 14, 2013, Bernard McPheely submitted a letter addressed to Scio Diamond Technology Corporation (the “Company”), in which he informed the Company of his resignation as a member of the Board of Directors of the Company (the “Board”), effective immediately. A copy of Mr. McPheely’s resignation letter is attached hereto as Exhibit 99.1.

Mr. McPheely submitted a second letter to the Board on May 14, 2013, which detailed his reasons for resigning. A copy of the second letter is attached hereto as Exhibit 99.2. Attached as Exhibit 99.3 is an email from Mr. McPheely in which he clarified that the intent of his resignation was to be effective May 14, 2013, despite being dated May 13, 2013.

The Company believes Mr. McPheely’s primary disagreements with the Company relate to the Board’s response to recent correspondence from the Company’s former counsel sent after such counsel was terminated by the Company as securities counsel for cause late in 2012. The Company believes that Mr. McPheely’s resignation was motivated in part by his involvement in some of the underlying events that caused the Company to terminate its former counsel. The Company disagrees with the characterizations and positions taken by Mr. McPheely in his second letter, including certain statements that the Company believes to be factually inaccurate. In this regard, the Company urges investors and potential investors to review all of its public filings for the disclosures contained therein. The Company notes that many of the assertions referenced by Mr. McPheely were the subject of a lawsuit against the Company and other defendants, which was dismissed on September 14, 2012. Additionally, contrary to Mr. McPheely’s statements, the Board did consider the appointment of a special committee relating to the recent correspondence from the Company’s former law firm, and the Company has conferred with outside counsel to address such correspondence.

Pursuant to the requirements of Item 5.02 of Form 8-K, the Company has provided Mr. McPheely with a copy of this Form 8-K concurrent with the filing with the Securities and Exchange Commission today.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

- 99.1 Bernard McPheely resignation letter, dated May 13, 2013.
- 99.2 Bernard McPheely letter detailing his reasons for resigning, dated May 13, 2013.
- 99.3 Bernard McPheely email, dated May 17, 2013.

SIGNATURE

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.

SCIO DIAMOND TECHNOLOGY CORPORATION

By: /s/ Michael W. McMahon

Michael W. McMahon
Chief Executive Officer

Date: May 20, 2013

EXHIBIT INDEX

Exhibit Number	Description
99.1	Bernard McPheely resignation letter, dated May 13, 2013.
99.2	Bernard McPheely letter detailing his reasons for resigning, dated May 13, 2013.
99.3	Bernard McPheely email, dated May 17, 2013.

Bernard M. McPheely
303 Golden Wings Way
Greer, South Carolina 29650
Telephone: (864) 915-0912
E-mail: bernmcpheely@gmail.com

May 13, 2013

Via Electronic Mail and U.S. Mail

SCIO Diamond Technology Corporation, Inc.
Attn: Michael W. McMahon
Chief Executive Officer
411 University Ridge, Suite D
Greenville, S.C. 29601

RE: Resignation from the Board of Directors of SCIO Diamond Technology Corporation, Inc. (the "Corporation")

Dear Michael:

Pursuant to Article II, Section 1(b) of the Corporation's Bylaws, I hereby resign immediately from the Board of Directors of the Corporation. I am doing so because of substantial corporate governance disagreements. A more detailed letter regarding my resignation is being sent to the Board.

Sincerely,

/s/ Bernard M. McPheely

Bernard M. McPheely

cc: Edward S. Adams, Esq.
Michael R. Monahan, Esq.
Robert C. Linares
Theodorus Strous

Bernard M. McPheely
303 Golden Wings Way
Greer, South Carolina 29650
Telephone: (864) 915-0912
E-mail: bernmcpheely@gmail.com

May 13, 2013

Via Electronic and Regular Mail

Edward S. Adams
2010 West 49th Street
Minneapolis, MN 55419
E-mail: edwardsadams@yahoo.com

Michael R. Monahan
c/o Adams Monahan LLP
60 South 6th Street, Suite 2540
Minneapolis, MN 55402
E-mail: michaelrmonahan@yahoo.com

Dr. Robert C. Linares
PO Box 1683
Wellfleet, MA 02667
E-mail: bob_linar@hotmail.com

Theodorus Strous
Urbanização do Barrocal No. 1
Rua do Tomilho, Lote A22
8365-211 Pêra
PORTUGAL
E-mail: tstrous@yahoo.com

RE: Resignation from the Board of Directors

Gentlemen:

I hereby resign from the Board of Directors of Scio Diamond Technology Corporation, Inc. (the "Corporation"). My resignation is effective immediately.

When I agreed to serve on the Board, I believed and expected the Board to fulfill its duties to act responsibly, with utmost good faith, and in the best interests of the Corporation and all shareholders. However, under the control of the majority directors and shareholders, the Board has not operated in this manner despite my efforts to get the Board to do so. I have voiced my concerns and objections to the Board's improper acts and omissions repeatedly, and every effort has been rebuffed or ignored.

The memorandum circulated earlier today by the Corporation's current CEO, Michael McMahon, is especially troubling for a number of reasons, including, but not limited to, the following: (1) It appears the Corporation's CEO is attempting to raise short and long term cash infusions into the company when he may not know about the February 14, 2013 Nelson Mullins Report or the issues raised in that Report. As you know from my February 18 and February 21, 2013 letters to Board, I raised the issue of the need to disclose the Nelson Mullins report to Corporation's officers and management and was expressly told by Ed Adams as Chairman of the Board that I could not do this and that only the Board as a whole could take such action, which it has refused to do. (2) The Corporation apparently now needs an immediate infusion of cash, yet

nothing has been done to address the serious questions raised in the Nelson Mullins Report. At the March 27, 2013 Board meeting, I submitted a resolution to appoint a special committee of the Board to investigate and act on the issues raised in the Report. This resolution was not voted on by the Board, despite my calling the question. To my knowledge, nothing has been done to address the issues raised in the Nelson Mullins Report since that time. (3) It is my opinion, which I strongly urge on the Board, that the Corporation cannot solicit new funds for the Corporation, either from an investor or lender without disclosing all material information in that Report to any such potential investor or lender. (4) It appears from Page 9 of McMahon's memorandum that Joe Lancia, and more troubling, Michael Monahan, are selling stock with the Nelson Mullins Report being unresolved. (5) It appears from Page 7 of McMahon's memorandum that a private placement memorandum (PPM) has been prepared and is being used without my knowledge or without having been approved by the Board.

I am concerned about the level of information which may or may not have been provided to the Corporation's securities counsel and auditors. Full disclosure is the only acceptable level of information to provide to the Corporation's securities counsel and the auditors. If the information has not been provided already, I demand that a copy of the full Nelson Mullins Report and McMahon's May 12 memorandum be provided to both securities counsel and auditors.

This letter is not intended as a complete or detailed list of all of the reasons for my resignation from the Board of the Corporation.

Sincerely,

/s/ Bernard M. McPheely
Bernard M. McPheely

From: Bern McPheely <bernmcpheely@gmail.com>
Date: May 17, 2013, 4:06:53 PM EDT
To: Mike McMahon <mmcmahon@sciodyiamond.com>, Edward Adams
<edwardsadams@yahoo.com>, Theo Strous <tstrous@yahoo.com>,
<bob_linar@hotmail.com>, Michael Monahan <michaelrmonahan@yahoo.com>

Subject: Resignation

Mike and Ed,

Although my resignation letter was dated Monday May 13, the intent of my resignation was to be effective Tuesday May 14 upon delivery.

Bern McPheely
