

FUEL TECH, INC.  
Form S-8  
January 09, 2015

As filed with the Securities and Exchange Commission on January 9, 2015  
Registration No. 333-

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM S-8  
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Fuel Tech, Inc.  
(Exact Name of Registrant as Specified in Its Charter)  
Delaware  
(State or other jurisdiction  
of incorporation)

20-5657551  
(I.R.S. Employer  
Identification No.)

27601 Bella Vista Parkway  
Warrenville, IL 60555-1617  
630-845-4500  
www.ftek.com

(Address of principal executive offices)

Fuel Tech, Inc. 2014 Long-Term Incentive Plan  
(Full title of the plan)

Albert G. Grigonis  
Senior Vice President, Secretary and General Counsel  
Fuel Tech, Inc.  
27601 Bella Vista Parkway  
Warrenville, Illinois 60555-1617  
(630) 845-4500  
(Name, address and telephone  
number, including area code, of agent for service)

With a copy to:

Ernest M. Lorimer  
Finn Dixon & Herling LLP  
177 Broad Street  
Stamford, Connecticut 06901-2048  
Tel: (203) 325-5000

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer

Accelerated Filer

Non-accelerated filer

Smaller reporting company

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee (5)
Common Stock, par value \$0.01 per share (3)	1,416,550	\$ 3.70	\$ 5,241,235	\$ 609.03
Common Stock, par value \$0.01 per share (4)	2,984,126	-	-	-

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(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement covers any additional securities to be offered or issued from stock splits, stock dividends or similar transactions or pursuant to anti-dilution adjustments.

(2) Estimated solely for purposes of calculating the registration fee pursuant to Securities Act Rules 457(c) and 457(h). The proposed maximum offering price per share, proposed maximum aggregate offering price and the amount of the registration fee are based on the average of the high and low prices of the registrant’s shares of common stock on January 6, 2015, as reported on the Nasdaq Global Select Market.

(3) Represents shares of the registrant’s common stock issuable under the Fuel Tech, Inc. 2014 Long-Term Equity Incentive Plan (the “2014 Plan”).

(4) Represents additional shares of the registrant’s common stock subject to outstanding awards granted under the Fuel Tech, Inc. Incentive Plan, as amended (the “Prior Plan”) that may become available for reuse under the 2014 Plan upon forfeiture, expiration, other termination without issuance of shares, settlement for cash (in whole or in part) or otherwise do not result in the issuance of all or a portion of the shares subject to a stock option or restricted stock unit under the Prior Plan (including, without limitation, shares withheld to satisfy the exercise price or withholding tax liabilities) following December 31, 2013, and that are eligible to be carried over to the 2014 Plan in accordance with its terms (the “Carry Forward Shares”). All of the Carry Forward Shares were registered pursuant to the registrant’s registration statement on Form S-8 filed with the Securities and Exchange Commission (the “SEC” or the “Commission”) (SEC File No. 333-36390). The Carry Forward Shares that may become issuable under the 2014 Plan are being carried forward to this Registration Statement pursuant to General Instruction E of Form S-8.

(5) Pursuant to General Instruction E to Form S-8 and Interpretation 89 under Section G of the Manual of Publicly Available Telephone Interpretations of the Division of Corporate Finance of the SEC (July 1997), the registration fee previously paid with respect to the Carry Forward Shares is being carried forward to the registration of shares hereunder.

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#### EXPLANATORY NOTE

This Registration Statement registers an aggregate 4,400,676 shares of common stock, par value \$0.01 per share (“Common Stock”), of Fuel Tech, Inc. (the “Company”) that have been or may be issued and sold under the 2014 Plan. The number of shares registered hereby is the sum of: (a) 1,416,550 shares of newly reserved Common Stock and (b) the Carry Forward Shares, meaning up to 2,984,126 shares of Common Stock subject to outstanding awards under the Prior Plan that may become available for reuse following December 31, 2013 in accordance with the provisions of the 2014 Plan.

The Carry Forward Shares were registered pursuant to the Company’s Registration Statement on Form S-8 (SEC File No. 333-36390), as amended (the “Prior Plan Registration Statement”). Concurrent with this Registration Statement, the Company is filing Post-Effective Amendment No. 2 to the Prior Plan Registration Statement to deregister the shares of Common Stock previously registered for offer and sale under the Prior Plan and remaining available for future issuance under the Prior Plan. The Company hereby carries forward and reallocates the Carry Forward Shares from the Prior Plan Registration Statement to this Registration Statement when such shares become available for issuance under the 2014 Plan.

#### PART I

##### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I will be sent or given to participants in the 2014 Plan as specified by Rule 428(b)(1) of the Securities Act. Such documents are not being filed with the Commission either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

#### PART II

##### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference

The Company hereby incorporates by reference in this Registration Statement the following documents:

- (a) The Company’s annual report on Form 10-K filed pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), containing audited financial statements for the Company’s fiscal year ended December 31, 2013 (the “Annual Report”), as filed with the Commission on March 10, 2014.
- (b) All other reports filed pursuant to Section 13(a) or 15(d) of the 1934 Act since the end of the fiscal year covered by the Annual Report.
- (c) The description of the Company’s common stock contained in the Company’s Registration Statement on Form 8-A, filed pursuant to Section 12 of the Exchange Act, as filed with the Commission on October 2, 2006, including any amendment or report filed for the purpose of updating such description
- (d) All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents; provided, however, that documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission shall not be deemed incorporated by reference into this Registration Statement.

#### Item 4. Description of Securities.

Not applicable.

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Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Under Section 145 of the Delaware General Corporation Law, a corporation may indemnify a director, officer, employee or agent of the corporation (or a person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. In the case of an action brought by or in the right of a corporation, the corporation may indemnify a director, officer, employee or agent of the corporation (or a person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) against expenses (including attorneys' fees) actually and reasonably incurred by him if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent a court finds that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

The Company's certificate of incorporation provides that no director of the Company shall be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted by law. The Company's certificate of incorporation also provides that the Company shall indemnify to the fullest extent permitted by Delaware law any and all of its directors and officers, or former directors and officers, or any person who may have served at the Company's request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise.

The Company has entered into indemnification agreements with each of its directors and executive officers to give such directors and officers additional contractual assurances regarding the scope of the indemnification set forth in our certificate of incorporation and to provide additional procedural protections. The Company also intends to enter into indemnification agreements with any new directors and executive officers in the future.

The indemnification provisions in the Company's certificate of incorporation and the indemnification agreements entered into between the Company and each of its directors and executive officers may be sufficiently broad to permit indemnification of the Company's directors and executive officers for liabilities arising under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits

See Exhibit Index.

Item 9. Undertakings.

A. The undersigned registrant hereby undertakes:

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(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement.

Provided, however, that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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SIGNATURE

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Warrenville, Illinois, on January 9, 2015.

FUEL TECH, INC.

By:

/s/ David S. Collins  
David S. Collins  
Chief Financial Officer

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Douglas G. Bailey and David S. Collins, each of them acting individually, as his or her attorney-in-fact, with the full power of substitution, for him or her in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8, and to file same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission granting unto said attorneys-in-fact, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming our signatures as they may be signed by our said attorney-in-fact and any and all amendments to this Registration Statement on Form S-8.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Douglas G. Bailey Douglas G. Bailey	Chairman and Director, President and Chief Executive Officer (Principal Executive Officer)	January 9, 2015
/s/ David S. Collins David S. Collins	Chief Financial Officer (Principal Financial and Accounting Officer)	January 9, 2015
/s/ Miguel Espinosa Miguel Espinosa	Director	January 9, 2015
/s/ W. Grant Gregory W. Grant Gregory	Director	January 9, 2015
/s/ George F. MacCormack George F. MacCormack	Director	January 9, 2015
/s/ Thomas S. Shaw, Jr. Thomas S. Shaw, Jr.	Director	January 9, 2015
/s/ Delbert L. Williamson Delbert L. Williamson	Director	January 9, 2015
/s/ Dennis L. Zeitler Dennis L. Zeitler	Director	January 9, 2015





## EXHIBIT INDEX

Exhibit No.	Exhibit Title	Filed Herewith	Form	Exhibit No.	File No.	Filing Date
4.1	Certificate of Incorporation of Fuel Tech, Inc.		8-K	3.2	001-33608	10/05/2006
4.2	Bylaws of Fuel Tech, Inc.		8-K	3.3	001-33608	10/05/2006
5.1	Opinion of Finn Dixon & Herling LLP	X				
10	Fuel Tech, Inc. 2014 Long-Term Incentive Plan		DEF 14A	-	001-33059	03/31/2014
23.1	Consent of McGladrey LLP	X				
24	Power of Attorney (included on signature page)	X				