

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): December 30, 2020

**Gevo, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-35073**  
(Commission File Number)

**87-0747704**  
(IRS Employer  
Identification No.)

**345 Inverness Drive South, Building C, Suite 310**  
**Englewood, CO 80112**  
(Address of principal executive offices)(Zip Code)

Registrant's telephone number, including area code: **(303) 858-8358**

**N/A**

(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))

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

<u>Title of each class</u>	<u>Trading symbol</u>	<u>Name of exchange on which registered</u>
Common Stock, par value \$0.01 per share	GEVO	Nasdaq Capital Market

Indicate by check mark whether the registrant is an emerging growth company as defined in 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.**

On December 30, 2020, Gevo, Inc. (the “Company”) entered into an amendment (the “Amendment”) to the At-The-Market Offering Agreement, dated February 13, 2018 (as amended, the “Sales Agreement”), with H.C. Wainwright & Co., LLC (the “Agent”), which provides for the issuance and sale from time to time of the Company’s common stock in an “at-the-market” offering (the “ATM Offering”). The Sales Agreement, among other things, provides for the issuance and sale under the ATM Offering of up to \$150 million of shares of the Company’s common stock (the “Shares”) pursuant to the prospectus supplement, dated December 30, 2020.

The Shares have been registered under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the Company’s Registration Statement on Form S-3 (File No. 333-226686), declared effective by the Securities and Exchange Commission (the “Commission”) on August 28, 2018 (the “Registration Statement”), and a prospectus, which consists of a base prospectus filed with the Registration Statement, and a prospectus supplement, dated December 30, 2020. Sales of the Shares, if any, may be made by any method permitted by law deemed to be an “at-the-market offering” as defined in Rule 415(a)(4) of the Securities Act, including sales made directly on or through the Nasdaq Capital Market or any other existing trading market for the Shares, in negotiated transactions at market prices prevailing at the time of sale or at prices related to such prevailing market prices and/or any other method permitted by law. If the Company and the Agent agree on any method of distribution other than sales of shares of the Company’s common stock into the Nasdaq Capital Market or another existing trading market in the United States at market prices, the Company will file a further prospectus supplement providing all information about such offering as required by Rule 424(b) under the Securities Act.

The Company intends to use the net proceeds from this offering to fund working capital and for other general corporate purposes.

The Sales Agreement contains customary representations, warranties and agreements by the Company, including obligations of the Company to indemnify the Agent for certain liabilities under the Securities Act. Under the terms of the Sales Agreement, the Company will pay the Agent a commission of up to 3.0% of the gross proceeds from sales of the Shares.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the Company’s common stock in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The foregoing description of the Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Amendment, a copy of which is filed herewith as Exhibit 10.1, and is incorporated herein by reference. A legal opinion relating to the Shares is filed herewith as Exhibit 5.1.

**Item 9.01. Financial Statements and Exhibits.**

(d) *Exhibits.*

<b>Exhibit No.</b>	<b>Description</b>
5.1	<a href="#">Opinion of Perkins Coie LLP, with respect to the legality of the securities being registered.</a>
10.1	<a href="#">Amendment to At-The-Market Offering Agreement, dated December 30, 2020, between Gevo, Inc. and H.C. Wainwright &amp; Co., LLC.</a>
23.1	<a href="#">Consent of Perkins Coie LLP (contained in Exhibit 5.1 hereto).</a>

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**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.

**GEVO, INC.**

Dated: December 30, 2020

By: /s/ Geoffrey T. Williams, Jr.  
Geoffrey T. Williams, Jr.  
*General Counsel and Secretary*



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perkinscoie.com

December 30, 2020

Gevo, Inc.  
345 Inverness Drive South  
Building C, Suite 310  
Englewood, Colorado 80112

**Re: Gevo, Inc. - Registration Statement on Form S-3 (File No. 333-226686)**

Ladies and Gentlemen:

We have acted as counsel to Gevo, Inc., a Delaware corporation (the "Company"), in connection with the issuance and sale from time to time of up to \$150,000,000 of shares of common stock of the Company, \$0.01 par value per share (the "Shares"), pursuant to the At-The-Market Offering Agreement, dated February 13, 2018, as amended on June 20, 2018, June 25, 2018, June 28, 2018, August 15, 2019 and as further amended on December 30, 2020 (as amended, the "Sales Agreement"), between the Company and H.C. Wainwright & Co., LLC. The Shares will be issued pursuant to the Company's Registration Statement on Form S-3 (File No. 333-226686), declared effective by the Securities and Exchange Commission (the "Commission") on August 28, 2018 (the "Registration Statement") under the Securities Act of 1933, as amended (the "Securities Act"), and the base prospectus filed as part of the Registration Statement, and the related prospectus supplement dated December 30, 2020 (collectively, the "Prospectus").

We have examined the Registration Statement, the Prospectus, the Sales Agreement and such documents and records of the Company and other documents as we have deemed necessary for the purposes of this opinion. In such examination, we have assumed the following: (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; and (iii) the truth, accuracy and completeness of the information, representations and warranties contained in the records, documents, instruments and certificates we have reviewed.

Based upon the foregoing, it is our opinion that the Shares have been duly authorized by all necessary corporate action of the Company and, upon (i) the due execution by the Company and registration by its registrar of the Shares, (ii) the offering and sale of the Shares in accordance with the Sales Agreement and the Prospectus, and (iii) receipt by the Company of the consideration therefor in accordance with the terms of the Sales Agreement, the Shares will be validly issued, fully paid and non-assessable.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Company's Current Report on Form 8-K filed with the Commission on or about the date hereof, to the incorporation by reference of this opinion into the Registration Statement and any amendments thereto, including any and all post-effective amendments, and to the reference to us under the headings "Legal Matters" in the Prospectus. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or related rules and regulations of the Commission issued thereunder.

Very truly yours,

/s/ PERKINS COIE LLP

December 30, 2020

Gevo, Inc.  
345 Inverness Drive South  
Building C, Suite 310  
Englewood, Colorado 80112  
Attention: Patrick R. Gruber, Chief Executive Officer

Dear Mr. Gruber:

Reference is made to the At The Market Offering Agreement, dated as of February 13, 2018 and as amended on June 20, 2018, June 25, 2018, June 28, 2018 and August 15, 2019 (the "ATM Agreement"), between Gevo, Inc. (the "Company") and H.C. Wainwright & Co., LLC ("Wainwright"). This letter (the "Amendment") constitutes an agreement between the Company and Wainwright to amend the ATM Agreement as set forth herein. Defined terms that are used but not defined herein shall have the meanings ascribed to such terms in the ATM Agreement.

1. The defined term "Agreement" in the ATM Agreement is amended to mean the ATM Agreement as amended by this Amendment.
2. The defined term "Business Day" in the ATM Agreement is hereby amended and restated as follows:

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or other day on which banking institutions or trust companies are authorized or obligated by law to close in New York City; provided, however, for purposes of clarity, banking institutions or trust companies shall not be deemed to be authorized or required by law to remain closed due to "stay at home", "shelter-in-place", "non-essential employee" or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of banking institutions in New York City generally are open for use by customers on such day."

3. The first sentence of Section 2 of the ATM Agreement is hereby amended and restated as follows:

"The Company proposes to issue and sell through or to the Manager, as sales agent and/or principal, from time to time during the term of this Agreement and on the terms set forth herein, up to the Maximum Amount (as defined below), which is equal to the lesser of such number of shares (the "Shares") of the Company's common stock, \$0.01 par value per share ("Common Stock"), that (a) equals the number or dollar amount of shares of Common Stock registered on the Registration Statement pursuant to which the offering is being made, (b) equals the number of authorized but unissued shares of Common Stock (less the number of shares of Common Stock issuable upon exercise, conversion or exchange of any outstanding securities of the Company or otherwise reserved from the Company's authorized capital stock), or (c) would cause the Company or the offering of the Shares to not satisfy the eligibility and transaction requirements for use of Form S-3, including General Instruction I.B.6 of Registration Statement on Form S-3, if applicable (the lesser of (a), (b) and (c), the "Maximum Amount")."

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4. A new Section 2(b)(ix) of the ATM Agreement is hereby inserted as follows:

“If the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a “Distribution” and the record date for the determination of stockholders entitled to receive the Distribution, the “Record Date”), the Company hereby covenants that, in connection with any sales of Shares pursuant to a Sales Notice on the Record Date, the Company covenants and agrees that the Company shall issue and deliver such Shares to the Manager on the Record Date and the Record Date shall be the Settlement Date and the Company shall cover any additional costs of the Manager in connection with the delivery of Shares on the Record Date.”

5. The first clause of Section 3(j) of the ATM Agreement is hereby amended and restated as follows:

“the Company has no subsidiaries (as defined under the Act) other than Gevo Development, LLC and Agri-Energy, LLC and any other subsidiaries of the Company formed after the date hereof and disclosed in the SEC Reports as required under the Exchange Act;”

6. Section 3(u) of the ATM Agreement is hereby amended and restated as follows:

“Grant Thornton LLP (or the Company’s then auditors), whose report on the consolidated financial statements of the Company and the Subsidiaries is included or incorporated by reference in the Registration Statement and the Prospectus, are independent registered public accountants with respect to the Company as required by the Act and by the rules of the Public Company Accounting Oversight Board;”

7. Section 13 of the ATM Agreement is hereby amended and restated as follows:

“Integration. This Agreement and any Terms Agreement supersede all prior agreements and understandings (whether written or oral) between the Company and the Manager with respect to the subject matter hereof. Notwithstanding anything herein to the contrary, the letter agreement, dated August 19, 2020, between the Company and the Manager shall continue to be effective and the terms therein shall continue to survive and be enforceable by the Manager in accordance with its terms, provided that, in the event of a conflict between the terms of the letter agreement and this Agreement, the terms of this Agreement shall prevail.”

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8. The Company and Wainwright hereby agree that the date of this Amendment shall be a Representation Date under the ATM Agreement, pursuant to which the Company shall deliver the deliverables required by Sections 4(k) and 4(l) of the ATM Agreement (but not the deliverables required by Section 4(m) of the ATM Agreement), and the Company shall file a Prospectus Supplement with the Commission on the date hereof

9. In connection with this Amendment, the Company shall reimburse Wainwright for its expenses in the amount of \$25,000, which shall be paid on the date hereof.

10. Except as expressly set forth herein, all of the terms and conditions of the ATM Agreement shall continue in full force and effect after the execution of this Amendment and shall not be in any way changed, modified or superseded by the terms set forth herein.

11. This Amendment may be executed in two or more counterparts and by facsimile or “.pdf” signature or otherwise, and each of such counterparts shall be deemed an original and all of such counterparts together shall constitute one and the same agreement.

*[remainder of page intentionally left blank]*

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In acknowledgment that the foregoing correctly sets forth the understanding reached by the Company and Wainwright, please sign in the space provided below, whereupon this Amendment shall constitute a binding amendment to the ATM Agreement as of the date indicated above.

Very truly yours,

**H.C. WAINWRIGHT & CO., LLC**

By /s/ Edward D. Silvera

Name: Edward D. Silvera

Title: Chief Operating Officer

Accepted and Agreed:

**GEVO, INC.**

By: /s/ Geoffrey T. Williams, Jr.

Name: Geoffrey T. Williams, Jr.

Title: General Counsel & Secretary

[SIGNATURE PAGE TO GEVO AMENDMENT TO ATM AGREEMENT]