

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

Pacific Ethanol, Inc.

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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) **January 4, 2013**

PACIFIC ETHANOL, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation)

000-21467

(Commission File Number)

41-2170618

(IRS Employer Identification No.)

400 Capitol Mall, Suite 2060, Sacramento, CA

(Address of principal executive offices)

95814

(Zip Code)

Registrant's telephone number, including area code: **(916) 403-2123**

(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 (*see* General Instruction A.2. below):

- 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 1.01 Entry into a Material Definitive Agreement.

Extension of Maturity of Plant Debt

On December 19, 2012, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with 5 accredited investors (the "Investors"). Under the terms of the Purchase Agreement, the Company agreed to sell \$22,192,490.64 in aggregate principal amount of its senior unsecured notes (the "Notes") and warrants (the "Warrants") to purchase an aggregate of 25,630,286 shares of the Company's common stock, \$0.001 par value per share, to the Investors in a private offering (the "Financing Transaction") for aggregate gross proceeds of \$22,192,490.64.

A summary of the terms of the Purchase Agreement, the Notes and the Warrants was disclosed on the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 19, 2012. Readers should review the Original 8-K and the exhibits filed with the Original 8-K for a complete understanding of the terms and conditions associated with the Financing Transaction.

The sale of the Notes and the Warrants to the Investors is expected to close (the "Closing") on or prior to January 18, 2013, subject to satisfaction of customary closing conditions. The Closing is also contingent upon, among other things, (i) the maturity date applicable to certain loans issued by certain indirect partially owned subsidiaries of the Company being extended immediately prior to the Closing ("Extension of Maturity of Plant Debt") and (ii) satisfactory evidence that the Acquisition of Plant Debt (as defined below) will be consummated concurrently with the Closing.

Subject to the consummation of the Financing Transaction, the Company has agreed to use \$21,538,595.64 of the gross proceeds of the Financing Transaction to purchase ("Acquisition of Plant Debt") from certain of the Investors (the "A-2 Investors") an aggregate principal amount of \$21,538,595.64 of Tranche A-2 Term Loans (the "Purchased Debt") issued under and as defined in that certain Second Amended and Restated Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein (the "Second Lien Credit Agreement").

On January 4, 2013, the A-2 Investors entered into a First Amendment to Second Amended and Restated Credit Agreement with Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower and as agent for borrowers, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, Wells Fargo Bank, N.A., as administrative agent and collateral agent and such other parties thereto as identified therein (the "Second Lien Credit Agreement Amendment") pursuant to which the terms of the Second Lien Credit Agreement will be amended to extend the maturity date applicable to the Purchased Debt from June 30, 2013 to June 30, 2016, with such amendment to be effective immediate prior to the closing of the Financing Transaction.

In addition, on January 4, 2013, Investors holding sufficient debt to amend the Credit Agreement dated as of October 29, 2012 among Pacific Ethanol Holding Co. LLC, a Delaware limited liability company, as a borrower thereunder and as agent for borrowers thereunder, and co-borrowers Pacific Ethanol Madera LLC, a Delaware limited liability company, Pacific Ethanol Columbia, LLC, a Delaware limited liability company, Pacific Ethanol Stockton LLC, a Delaware limited liability company, and Pacific Ethanol Magic Valley, LLC, a Delaware limited liability company, each of the lenders thereunder who are from time to time signatories thereto, Wells Fargo Bank, N.A., as administrative agent and collateral agent for such lenders and such other parties thereto as identified therein (the "First Lien Credit Agreement") entered into a First Amendment to Credit Agreement (the "First Lien Credit Agreement Amendment") under which such Lenders agreed to amend the terms of the First Lien Credit Agreement to extend the maturity date of the \$10.0 million revolving line of credit from June 25, 2013 to June 25, 2015 with such amendment to be effective immediate prior to the closing of the Financing Transaction.

There can be no assurance that the closing of the Financing Transaction, the Acquisition of Plant Debt or Extension of Maturity of Plant Debt will be consummated.

Employment Agreement

On January 6, 2013, Pacific Ethanol, Inc. (the “Company”) entered into an Executive Employment Agreement with Michael D. Kandris that provides for Mr. Kandris’ at-will employment as the Company’s Chief Operating Officer. Mr. Kandris shall initially receive a base salary of \$246,000 per year, subject to annual review and increase in the Company’s board of director’s sole discretion. Mr. Kandris is also eligible to receive an annual discretionary cash bonus of up to 50% of his base salary, to be paid based upon performance criteria set by the Company’s board of directors.

Upon termination by the Company without cause, resignation by Mr. Kandris for good reason or upon Mr. Kandris’s disability, Mr. Kandris is entitled to receive (i) severance equal to twelve months of base salary, (ii) continued health insurance coverage for twelve months, and (iii) accelerated vesting of 25% of all shares or options subject to any equity awards granted to Mr. Kandris prior to Mr. Kandris’s termination which are unvested as of the date of termination. However, if Mr. Kandris is terminated without cause or resigns for good reason within three months before or twelve months after a change in control, Mr. Kandris is entitled to (a) severance equal to eighteen months of base salary, (b) continued health insurance coverage for eighteen months, and (c) accelerated vesting of 100% of all shares or options subject to any equity awards granted to Mr. Kandris prior to Mr. Kandris’s termination that are unvested as of the date of termination.

The term “for good reason” is defined in the Executive Employment Agreement as (i) the assignment to Mr. Kandris of any duties or responsibilities that result in the material diminution of Mr. Kandris’s authority, duties or responsibility, (ii) a material reduction by the Company in Mr. Kandris’s annual base salary, except to the extent the base salaries of all other executive officers of the Company are accordingly reduced, (iii) a relocation of Mr. Kandris’s place of work, or the Company’s principal executive offices if Mr. Kandris’s principal office is at these offices, to a location that increases Mr. Kandris’s daily one-way commute by more than thirty-five miles, or (iv) any material breach by the Company of any material provision of the Executive Employment Agreement.

The term “cause” is defined in the Executive Employment Agreement as (i) Mr. Kandris’s indictment or conviction of any felony or of any crime involving dishonesty, (ii) Mr. Kandris’s participation in any fraud or other act of willful misconduct against the Company, (iii) Mr. Kandris’s refusal to comply with any lawful directive of the Company, (iv) Mr. Kandris’s material breach of his fiduciary, statutory, contractual, or common law duties to the Company, or (v) conduct by Mr. Kandris which, in the good faith and reasonable determination of the Company’s board of directors, demonstrates gross unfitness to serve; provided, however, that in the event that any of the foregoing events is reasonably capable of being cured, the Company shall, within twenty days after the discovery of the event, provide written notice to Mr. Kandris describing the nature of the event and Mr. Kandris shall thereafter have ten business days to cure the event.

A “change in control” of the Company is deemed to have occurred if, in a single transaction or series of related transactions (i) any person (as the term is used in Section 13(d) and 14(d) of the Exchange Act), or persons acting as a group, other than a trustee or fiduciary holding securities under an employee benefit program, is or becomes a “beneficial owner” (as defined in Rule 13-3 under the Exchange Act), directly or indirectly of securities of the Company representing a majority of the combined voting power of the Company, (ii) there is a merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to the transaction continue to hold (either by the shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after the transaction, or (iii) all or substantially all of our assets are sold.

Item 9.01. Financial Statements and Exhibits.

Exhibit No. Description

10.1 Executive Employment Agreement for Michael Kandris, dated January 6, 2013 (*)

(*) Filed as an exhibit hereto.

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: January 10, 2013

PACIFIC ETHANOL, INC.

By: /S/ CHRISTOPHER W. WRIGHT

Christopher W. Wright,

Vice President, General Counsel & Secretary

EXHIBITS FILED WITH THIS REPORT

<u>Exhibit No.</u>	<u>Description</u>
10.1	Executive Employment Agreement for Michael Kandris, dated January 6, 2013

PACIFIC ETHANOL, INC.

**EXECUTIVE EMPLOYMENT AGREEMENT
for
MICHAEL KANDRIS**

This Executive Employment Agreement (“Agreement”) by and between Michael D. Kandris (“Executive”) and Pacific Ethanol, Inc. (the “Company”) (collectively, the “Parties”) is effective as of the last date signed by the Parties.

WHEREAS, the Company desires to employ Executive to provide personal services to the Company, and wishes to provide Executive with certain compensation and benefits in return for his services;

WHEREAS, Executive wishes to be employed by the Company and to provide personal services to the Company in return for certain compensation and benefits;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the parties hereto as follows:

1. EMPLOYMENT BY THE COMPANY.

1.1 Position. Subject to terms and conditions set forth herein, the Company agrees to employ Executive in a senior executive position with the title “Chief Operating Officer,” and Executive hereby accepts such employment. During the term of Executive’s employment with the Company, Executive will devote Executive’s best efforts and substantially all of Executive’s business time and attention to the business of the Company, except for vacation periods and reasonable periods of illness or other incapacities permitted by the Company’s general employment policies.

1.2 Duties and Location. Executive shall serve in an executive capacity with responsibility for the operation of the Company’s ethanol plants. Executive shall also perform such duties as are required by the Company’s Board of Directors (the “Board”) and Chief Executive Officer. Executive shall report to the Company’s Chief Executive Officer and shall serve on the Company’s Executive Committee. Executive’s primary office location shall be a location mutually acceptable to both the Executive and the Company. The Company reserves the right to reasonably require Executive to perform Executive’s duties at places other than Executive’s primary office location from time to time as agreed to by Executive, and to require reasonable business travel.

1.3 Policies and Procedures. The employment relationship between the parties shall be governed by the general employment policies and practices of the Company, except that when the terms of this Agreement differ from or are in conflict with the Company’s general employment policies or practices, this Agreement shall control.

2. COMPENSATION.

2.1 Salary. For services to be rendered hereunder, Executive shall receive an annual salary at the rate of \$246,000.00, paid bi-weekly in the amount of \$9,461.54 (the "Base Salary"), subject to standard payroll deductions and withholdings and payable in accordance with the Company's regular payroll schedule. Executive's Base Salary shall be reviewed annually and may be increased as approved by the Board in its sole discretion.

2.2 Annual Bonus. Executive will be eligible for an annual discretionary bonus of up to fifty percent (50%) of his Base Salary (the "Annual Bonus"). Whether any Annual Bonus will be awarded, and the amount of the Annual Bonus awarded to Executive, shall be determined by the Board in its sole discretion based upon its consideration of both the Company's performance and Executive's performance. Since the Annual Bonus is intended both to reward past Company and Executive performance and to provide an incentive for Executive to remain with the Company, Executive must remain an active employee through the date that any such bonus is awarded to him in order to earn any such bonus. Executive will not earn any Annual Bonus (including a prorated bonus) if Executive's employment terminates for any reason before the Annual Bonus is awarded to him. Any Annual Bonus awarded by the Board shall be paid within the first quarter after the end of the calendar year.

2.3 Standard Company Benefits. Executive shall be entitled to participate in all employee benefit programs for which Executive is eligible under the terms and conditions of the benefit plans which may be in effect from time to time and provided by the Company to its employees generally; **provided, however,** that Executive shall not be entitled to accrued vacation pay.

2.4 Restricted Stock; Options. The Executive shall be eligible for grants of restricted stock and/or stock options from time to time as shall be determined by the Compensation Committee of the Board in its sole discretion, and shall be subject to such vesting, exercisability, and other provisions as the Board may determine in its discretion, after reviewing the performance of both Executive and the Company. Both the Restricted Stock and any stock options shall be governed in all respects by the terms of the applicable restricted stock purchase agreement, stock option agreement, grant notice and plan documents.

3. CONFIDENTIAL INFORMATION OBLIGATIONS.

3.1 Confidential Information Agreement. As a condition of employment, Executive agrees to execute and abide by the Employee Confidential Information and Inventions Agreement attached hereto as Exhibit A.

3.2 Third Party Agreements and Information. Executive represents and warrants that Executive's employment by the Company will not conflict with any prior employment or consulting agreement or other agreement with any third party, and that Executive will perform Executive's duties to the Company without violating any such agreement. Executive represents and warrants that Executive does not possess confidential information arising out of prior employment, consulting, or other third party relationships, which would be used in connection with Executive's employment by the Company, except as expressly authorized by that third party. During Executive's employment by the Company, Executive will use in the performance of Executive's duties only information which is generally known and used by persons with training and experience comparable to Executive's own, common knowledge in the industry, otherwise legally in the public domain, or obtained or developed by the Company or by Executive in the course of Executive's work for the Company.

4. OUTSIDE ACTIVITIES DURING EMPLOYMENT.

4.1 Non-Company Business. Except with the prior written consent of the Chief Executive Officer (in consultation with the General Counsel), Executive will not during the term of Executive's employment with the Company undertake or engage in any other employment, occupation or business enterprise, other than ones in which Executive is a passive investor. Executive may engage in civic and not-for-profit activities so long as such activities do not materially interfere with the performance of Executive's duties hereunder.

4.2 No Adverse Interests. Executive agrees not to acquire, assume or participate in, directly or indirectly, any position, investment or interest known by him to be adverse or antagonistic to the Company, its business or prospects, financial or otherwise, except as a passive investor in mutual or exchange traded funds.

5. TERMINATION OF EMPLOYMENT.

5.1 At-Will Relationship. Executive's employment relationship is at-will. Either Executive or the Company may terminate the employment relationship at any time, with or without Cause or advance notice.

5.2 Termination without Cause; Resignation for Good Reason. If, at any time, the Company terminates Executive's employment without Cause (as defined herein), or Executive resigns with Good Reason (as defined herein), and Executive executes and delivers the Separation Date Release of all claims set forth as Exhibit B hereto and allows such release to become effective, then the Company will provide Executive with the following severance benefits:

(a) Cash Severance. The Company shall pay Executive severance in the form of continuation of Executive's Base Salary in effect on Executive's last day of employment for a period of twelve (12) months after Executive's termination, subject to standard payroll deductions and withholdings and payable on the Company's regular payroll schedule; **provided, however,** that in the event the Company terminates Executive's employment without Cause, or Executive resigns with Good Reason, within three (3) months before or otherwise in anticipation of, or within twelve (12) months after, a Change in Control (as defined below), then the Company shall pay Executive severance in the form of continuation of Executive's Base Salary in effect on Executive's last day of employment for a period of eighteen (18) months after Executive's termination, subject to standard payroll deductions and withholdings and payable on the Company's regular payroll schedule. Each payment made pursuant to this Section 5.2(a) is intended to be a separate payment (as defined in Treasury Regulations Section 1.409A-2(b)(2)) from any other payments made pursuant to this Section 5.2(a) for purposes of the "short term deferral rule" under Treasury Regulations Section 1.409A-1(b)(4).

(b) Continued Health Insurance Coverage. To the extent provided by the federal COBRA law or, if applicable, state insurance laws, and by the Company's then-current group health insurance policies, Executive may be eligible to continue Executive's then-current group health insurance benefits after termination of Employment. If eligible and if Executive timely elects continued health insurance coverage, then the Company shall pay the Company's portion of any premiums necessary to provide coverage for a period of twelve (12) months after the termination date; **provided, however,** that no such premium payments shall be made following the effective date of Executive's coverage by a medical, dental or vision insurance plan of a subsequent employer. Executive shall notify the Company immediately if he becomes covered by a medical, dental or vision insurance plan of a subsequent employer. Notwithstanding the foregoing, in the event the Company terminates Executive's employment without Cause, or Executive resigns with Good Reason, within three (3) months before or otherwise in anticipation of, or within twelve (12) months after, a Change in Control (as defined below), then (if eligible and coverage elected) the Company shall pay the Company's portion of any premiums necessary to provide coverage for a period of eighteen (18) months after the termination date; **provided, however,** that no such premium payments shall be made following the effective date of Executive's coverage by a medical, dental or vision insurance plan of a subsequent employer and Executive agrees to immediately notify the Company of any such coverage.

(c) Accelerated Vesting. The Company will accelerate the vesting of any equity awards granted to Executive prior to Executive's employment termination such that twenty-five percent (25%) of all shares or options subject to such awards which are unvested as of the employment termination date shall be accelerated and deemed fully vested as of Executive's last day of employment; **provided, however,** that in the event the Company terminates Executive's employment without Cause, or Executive resigns with Good Reason, within three (3) months before or otherwise in anticipation of, or within twelve (12) months after, a Change in Control (as defined below), then the Company will accelerate the vesting of any equity awards granted to Executive prior to Executive's employment termination such that one hundred percent (100%) of all shares or options subject to such awards which are unvested as of the employment termination date shall be accelerated and deemed fully vested as of Executive's last day of employment.

5.3 Termination for Cause; Resignation Without Good Reason. If the Company terminates Executive's employment with the Company for Cause, or Executive resigns without Good Reason, then Executive will not be entitled to any further compensation from the Company (other than accrued salary, and accrued and unused vacation, through Executive's last day of employment), including severance pay, pay in lieu of notice or any other such compensation.

5.4 Termination Due to Death or Disability.

(a) **Death.** This Agreement shall terminate immediately upon Executive's death and Executive's estate shall not be entitled to any further compensation from the Company (other than accrued salary, and accrued and unused vacation, through Executive's last day of employment), including severance pay, pay in lieu of notice or any other such compensation.

(b) **Disability.** If Executive is prevented from performing his duties as described in Section 1.1 of this Agreement by reason of any physical or mental incapacity that results in Executive's satisfaction of all requirements necessary to receive benefits under the Company's long-term disability plan due to a total disability, then, to the extent permitted by law, the Company may terminate the employment of Executive and this Agreement at or after such time.

(i) **Cash Severance.** The Company shall pay Executive severance in the form of continuation of Executive's Base Salary in effect on Executive's last day of employment for a period of twelve (12) months after Executive's termination, subject to standard payroll deductions and withholdings and payable on the Company's regular payroll schedule.

(ii) **Continued Health Insurance Coverage.** To the extent provided by the federal COBRA law or, if applicable, state insurance laws, and by the Company's then-current group health insurance policies, Executive may be eligible to continue Executive's then-current group health insurance benefits after termination of Employment. If eligible and if Executive timely elects continued health insurance coverage, then the Company shall pay the Company's portion of any premiums necessary to provide coverage for a period of twelve (12) months after the termination date; **provided, however,** that no such premium payments shall be made following the effective date of Executive's coverage by a medical, dental or vision insurance plan of a subsequent employer. Executive shall notify the Company immediately if he becomes covered by a medical, dental or vision insurance plan of a subsequent employer.

(iii) **Accelerated Vesting.** The Company will accelerate the vesting of any equity awards granted to Executive prior to Executive's employment termination such that twenty-five percent (25%) of all shares or options subject to such awards which are unvested as of the employment termination date shall be accelerated and deemed fully vested as of Executive's last day of employment.

5.5 Deferred Compensation. Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Agreement (the "Severance Benefits") that constitute "deferred compensation" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations and other guidance thereunder and any state law of similar effect (collectively "Section 409A") shall not commence in connection with Executive's termination of employment unless and until Executive has also incurred a "separation from service" (as such term is defined in Treasury Regulation Section 1.409A-1(h) ("Separation From Service")), unless the Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A.

It is intended that each installment of the Severance Benefits payments provided for in this Agreement is a separate “payment” for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). For the avoidance of doubt, it is intended that payments of the Severance Benefits set forth in this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9).

If Executive is a “specified employee” within the meaning of 409A(a)(2)(B)(i) of the Code, any Severance Benefit payments that are triggered by a separation from service shall be accelerated to the minimum extent necessary so that (a) the lesser of (y) the total cash severance payment amount, or (z) six (6) months of such installment payments are paid no later than March 15 of the calendar year following such termination, and (b) all amounts paid pursuant to the foregoing clause (a) will constitute separate payments for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations and thus will be payable pursuant to the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations. It is intended that if Executive is a “specified employee” within the meaning of Section 409A(a)(2)(B)(i) of the Code at the time of such separation from service the foregoing provision shall result in compliance with the requirements of Section 409A(a)(2)(B)(i) of the Code since payments to Executive will either be payable pursuant to the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations or will not be paid until at least 6 months after separation from service.

Notwithstanding any other payment schedule set forth in this Agreement, none of the Severance Benefits will be paid or otherwise delivered prior to the effective date of the Separation Date Release of all claims set forth as Exhibit B hereto. On the first regular payroll pay day following the effective date of the Separation Date Release of all claims, the Company will pay Executive the Severance Benefits Executive would otherwise have received under the Agreement on or prior to such date but for the delay in payment related to the effectiveness of the release of claims, with the balance of the Severance Benefits being paid as originally scheduled. All amounts payable under the Agreement will be subject to standard payroll taxes and deductions.

5.6 Limitation on Payments. In the event that the payments or other benefits provided for in this Agreement or otherwise payable to Executive (i) constitute “parachute payments” within the meaning of Section 280G of the Code, and (ii) would be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then Executive’s benefits under this Agreement shall be either (a) delivered in full, or (b) delivered to such lesser extent which would result in no portion of such benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Executive on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. If a reduction in payments or benefits constituting “parachute payments” is necessary pursuant to the foregoing provision, reduction shall occur in the following order: reduction of cash payments; cancellation of accelerated vesting of stock awards; reduction of employee benefits. If acceleration of vesting of stock award compensation is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of the date of grant of the Executive’s stock awards.

5.7 No Mitigation. Executive shall not be required to mitigate damages or the amount of any payment provided for under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for under this Agreement be reduced by any compensation earned by Executive as the result of employment by another employer after the date of termination, or otherwise, except for health insurance benefits as set forth herein.

5.8 Definitions.

(a) For purposes of this Agreement, “Cause” shall mean any one or more of the following:

(i) Executive’s indictment or conviction of any felony or of any crime involving dishonesty;

(ii) Executive’s participation in any fraud or other act of willful misconduct against the Company (including any material breach of Company policy that causes or reasonably could cause harm to the Company);

(iii) Executive’s refusal to comply with any lawful directive of the Company;

(iv) Executive’s material breach of Executive’s fiduciary, statutory, contractual, or common law duties to the Company (including any material breach of this Agreement or the Confidential Information and Inventions Agreement); or

(v) Conduct by Executive which in the good faith and reasonable determination of the Board demonstrates gross unfitness to serve.

Provided, however, that in the event that any of the foregoing events is reasonably capable of being cured, the Company shall, within twenty (20) days after the discovery of such event, provide written notice to the Executive describing the nature of such event and Executive shall thereafter have ten (10) business days to cure such event.

(b) For purposes of this Agreement, Executive shall have “Good Reason” for Executive’s resignation if: (w) any of the following occurs without Executive’s consent; (x) Executive notifies the Company in writing, within twenty (20) days after the occurrence of one of the following events that Executive intends to terminate his employment no earlier than thirty (30) days after providing such notice; (y) the Company does not cure such condition within thirty (30) days following its receipt of such notice or states unequivocally in writing that it does not intend to attempt to cure such condition, and (z) the Executive resigns from employment within thirty (30) days following the end of the period within which the Company was entitled to remedy the condition constituting Good Reason but failed to do so:

(i) the assignment to Executive of any duties or responsibilities which result in the material diminution of Executive's authority, duties or responsibility; **provided, however**, that the acquisition of the Company and subsequent conversion of the Company to a division or unit of the acquiring corporation will not by itself result in a material diminution of Executive's authority, duties or responsibility;

(ii) a material reduction by the Company in Executive's annual base salary, except to the extent the base salaries of all other executive officers of the Company are accordingly reduced;

(iii) a relocation of Executive's place of work, or the Company's principal executive offices if Executive's principal office is at such offices, to a location that increases Executive's daily one-way commute by more than thirty-five (35) miles; or

(iv) any material breach by the Company of any material provision of this Agreement, including but not limited to Section 7.7.

(c) For purposes of this Agreement, "**Change in Control**" shall be deemed to have occurred if, in a single transaction or series of related transactions: (i) any person (as such term is used in Section 13(d) and 14(d) of the Securities Exchange Act of 1934 ("Exchange Act")), or persons acting as a group, other than a trustee or fiduciary holding securities under an employment benefit program, is or becomes a "beneficial owner" (as defined in Rule 13-3 under the Exchange Act), directly or indirectly of securities of the Company representing a majority (*e.g.*, 50% plus one share) of the combined voting power of the Company, (ii) there is a merger, consolidation or other business combination transaction of the Company with or into another corporation, entity or person, other than a transaction in which the holders of at least a majority of the shares of voting capital stock of the Company outstanding immediately prior to such transaction continue to hold (either by such shares remaining outstanding or by their being converted into shares of voting capital stock of the surviving entity) a majority of the total voting power represented by the shares of voting capital stock of the Company (or the surviving entity) outstanding immediately after such transaction, or (iii) all or substantially all of the Company's assets are sold.

6. ARBITRATION.

To ensure the timely and economical resolution of disputes that may arise in connection with Executive's employment with the Company, Executive and the Company agree that any and all disputes, claims, or causes of action arising from or relating to the enforcement, breach, performance, negotiation, execution, or interpretation of this Agreement, Executive's employment, or the termination of Executive's employment, shall be resolved to the fullest extent permitted by law by final, binding and confidential arbitration, by a single arbitrator, in Sacramento, California, conducted by JAMS under the then applicable JAMS rules. **By agreeing to this arbitration procedure, both Executive and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding.** The arbitrator shall: (a) have the authority to compel adequate discovery for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award. The arbitrator shall be authorized to award any or all remedies that Executive or the Company would be entitled to seek in a court of law. The Company shall pay all JAMS' arbitration fees in excess of the amount of court fees that would be required if the dispute were decided in a court of law. Nothing in this Agreement is intended to prevent either Executive or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration.

7. GENERAL PROVISIONS.

7.1 Notices. Any notices provided hereunder must be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by fax) or the next day after sending by overnight carrier, to the Company at its primary office location and to Executive at his address as listed on the Company payroll.

7.2 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction to the extent possible in keeping with the intent of the parties.

7.3 Waiver. Any waiver of any breach of any provisions of this Agreement must be in writing to be effective, and it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.

7.4 Complete Agreement. This Agreement, including Exhibit A, constitutes the entire agreement between Executive and the Company and it is the complete, final, and exclusive embodiment of their agreement with regard to this subject matter. This Agreement supersedes and replaces the Original Employment Agreement in its entirety and the Original Employment Agreement shall have no further force or effect. It is entered into without reliance on any promise or representation other than those expressly contained herein, and it cannot be modified or amended except in a writing signed by the Executive and a duly authorized officer of the Company.

7.5 Counterparts. This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

7.6 Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

7.7 Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive and the Company, and their respective successors, assigns, heirs, executors and administrators, except that Executive may not assign any of his duties hereunder and he may not assign any of his rights hereunder without the written consent of the Company, which shall not be withheld unreasonably. The Company shall obtain the assumption of this Agreement by any successor or assign of the Company.

7.8 Choice of Law. All questions concerning the construction, validity and interpretation of this Agreement will be governed by the law of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Pacific Ethanol, Inc.

By: /s/ Neil M. Koehler

Neil M. Koehler
President and Chief Executive Officer

Date: January 6, 2013

Understood and Agreed:

Executive

By: /s/ Michael D. Kandris

Michael D. Kandris

Date: January 6, 2013

EXHIBIT A
CONFIDENTIAL INFORMATION AND INVENTIONS AGREEMENT

EXHIBIT B

SEPARATION DATE RELEASE

(To be signed on or within 21 days after the employment termination date.)

In exchange for the severance benefits to be provided to me by Pacific Ethanol, Inc. (the "Company") pursuant to the terms of my Employment Agreement (the "Agreement"), I hereby provide the following General Release of Claims (the "Release"). I understand that, on the last date of my employment with the Company, the Company will pay me any accrued salary to which I am entitled by law, regardless of whether I sign this Release, but I am not entitled to any severance benefits unless I sign and return this Release to the Company and I allow it to become effective.

I hereby generally and completely release the Company and its directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively the "Released Parties") of and from any and all claims, liabilities and obligations, both known and unknown, arising out of or in any way related to events, acts, conduct, or omissions occurring at any time prior to or at the time that I sign this Release.

This general release includes, but is not limited to: (1) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (2) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership or equity interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing (including claims based on or arising under the Agreement); (4) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act (as amended) ("ADEA"), the federal Family and Medical Leave Act, the California Labor Code (as amended), the California Family Rights Act, and the California Fair Employment and Housing Act (as amended).

I understand that notwithstanding the foregoing, the following are not included in the Released Claims (the "Excluded Claims"): (i) any rights or claims for indemnification I may have pursuant to any written indemnification agreement to which I am a party, the charter, bylaws, or operating agreements of any of the Released Parties, or under applicable law; or (ii) any rights which are not waivable as a matter of law. In addition, I understand that nothing in this release prevents me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I acknowledge and agree that I shall not recover any monetary benefits in connection with any such claim, charge or proceeding with regard to any claim released herein. I hereby represent and warrant that, other than the Excluded Claims, I am not aware of any claims I have or might have against any of the Released Parties that are not included in the Released Claims.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA, and that the consideration given for the waiver and release in the preceding paragraph is in addition to anything of value to which I am already entitled. I further acknowledge that I have been advised by this writing that: (1) my waiver and release do not apply to any rights or claims that may arise after the date I sign this Release; (2) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not to do so); (3) I have twenty-one (21) days to consider this Release (although I may choose voluntarily to sign it earlier); (4) I have seven (7) days following the date I sign this Release to revoke it by providing written notice of revocation to the Company's Chief Executive Officer; and (5) this Release will not be effective until the date upon which the revocation period has expired, which will be the eighth calendar day after the date I sign it provided that I do not revoke it (the "Effective Date").

I UNDERSTAND THAT THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I hereby expressly waive and relinquish all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction with respect to my release of claims herein, including but not limited to the release of unknown and unsuspected claims.

I hereby represent that I have been paid all compensation owed and for all hours worked, I have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act, the California Family Rights Act, or otherwise, and I have not suffered any on-the-job injury for which I have not already filed a workers' compensation claim.

I further agree: (1) not to disparage the Company, its parent, or its or their officers, directors, employees, shareholders, affiliates and agents, in any manner likely to be harmful to its or their business, business reputation, or personal reputation (although I may respond accurately and fully to any question, inquiry or request for information as required by legal process); (2) not to voluntarily (except in response to legal compulsion) assist any third party in bringing or pursuing any proposed or pending litigation, arbitration, administrative claim or other formal proceeding against the Company, its parent or subsidiary entities, affiliates, officers, directors, employees or agents; and (3) to reasonably cooperate with the Company, by voluntarily (without legal compulsion) providing accurate and complete information, in connection with the Company's actual or contemplated defense, prosecution, or investigation of any claims or demands by or against third parties, or other matters, arising from events, acts, or failures to act that occurred during the period of my employment by the Company.

By: _____
Michael Kandris **Date**