UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the fiscal year ended December 31, 2010**

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the transition period from ________ to _______**

Commission file number: 000-21467

PACIFIC ETHANOL, INC.
(Exact name of registrant as specified in its charter)

Delaware	**41-2170618**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
400 Capitol Mall, Suite 2060, Sacramento, California	**95814**
(Address of principal executive offices)	**(Zip Code)**

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

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

Title of Class	Name of Exchange on Which Registered
Common Stock, $0.001 par value	The Nasdaq Stock Market LLC (Nasdaq Capital Market)

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files. Yes ☐ No ☐

Indicate by check mark if disclosure of delinquent filers in response to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or 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. (Check one):

Large accelerated filer ☐	Accelerated filer ☐
Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of the voting common equity held by nonaffiliates of the registrant computed by reference to the closing sale price of such stock, was approximately $50.0 million as of June 30, 2010, the last business day of the registrant's most recently completed second fiscal quarter. The registrant has no non-voting common equity.

The number of shares of the registrant's common stock, $0.001 par value, outstanding as of March 31, 2011 was 108,430,832.

DOCUMENTS INCORPORATED BY REFERENCE:

Part III incorporates by reference certain information from the registrant's definitive proxy statement (the "Proxy Statement") for the 2011 Annual Meeting of Stockholders to be filed on or before April 30, 2011.

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CAUTIONARY STATEMENT

All statements included or incorporated by reference in this Annual Report on Form 10-K, other than statements or characterizations of historical fact, are forward-looking statements. Examples of forward-looking statements include, but are not limited to, statements concerning projected net sales, costs and expenses and gross margins; our accounting estimates, assumptions and judgments; our success in pending litigation; the demand for ethanol and its co-products; the competitive nature of and anticipated growth in our industry; production capacity and goals; our ability to consummate acquisitions and integrate their operations successfully; and our prospective needs for additional capital. These forward-looking statements are based on our current expectations, estimates, approximations and projections about our industry and business, management's beliefs, and certain assumptions made by us, all of which are subject to change. Forward-looking statements can often be identified by words such as "anticipates," "expects," "intends," "plans," "predicts," "believes," "seeks," "estimates," "may," "will," "should," "would," "could," "potential," "continue," "ongoing," similar expressions and variations or negatives of these words. These statements are not guarantees of future performance and are subject to risks, uncertainties and assumptions that are difficult to predict. Therefore, our actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors, some of which are listed under "Risk Factors" in Item 1A of this report. These forward-looking statements speak only as of the date of this report. We undertake no obligation to revise or update publicly any forward-looking statement for any reason, except as otherwise required by law.

PART I

Item 1. Business.

Business Overview

Background

We are the leading marketer and producer of low carbon renewable fuels in the Western United States.

Since our inception in 2005, we have conducted ethanol marketing operations through our subsidiary Kinergy Marketing, LLC, or Kinergy, through which we market and sell ethanol produced by third parties. In 2006, we began constructing the first of our four then wholly-owned ethanol production facilities, or Pacific Ethanol Plants, and were continuously engaged in plant construction until the fourth facility was completed in 2008. We funded, and until recently directly operated, four wholly-owned production facilities through a subsidiary holding company and four other indirect subsidiaries. We refer to these five subsidiaries as the Plant Owners.

In 2006, we completed our Madera, California facility and began producing ethanol and its co-products at the facility, and also acquired a 42% interest in Front Range Energy, LLC, or Front Range, which owns an ethanol production facility in Windsor, Colorado. In 2007, we entered into credit agreements to borrow up to $325.0 million to fund the construction of, or refinance indebtedness in respect of, up to five ethanol production facilities and provide working capital as each production facility became operational. Later in 2007, the credit facility was reduced to $250.8 million for up to four ethanol production facilities. A portion of this indebtedness was used to refinance outstanding indebtedness in respect of the Madera facility as well as other facilities under construction. In 2007, we began production at the Columbia facility in Boardman, Oregon and in 2008, we began production at the Magic Valley facility in Burley, Idaho and another facility in Stockton, California. See "—Pacific Ethanol Plants" below.

Our net sales increased significantly from $87.6 million in 2005 to $703.9 million in 2008 as the Pacific Ethanol Plants began production in 2006, 2007 and 2008, with all facilities producing and selling ethanol in the last quarter of 2008. During these periods, we also sold additional volume under ethanol marketing arrangements with third party suppliers. However, our net sales dropped considerably to $316.6 million in 2009 as we idled production at three of the Pacific Ethanol Plants for most of 2009, as discussed further below.

Our average ethanol sales price peaked at $2.28 per gallon in 2006, stayed relatively stable for 2007 and 2008, but declined to $1.80 per gallon in 2009. In 2007, our average price of corn, the primary raw material for our ethanol production, began increasing dramatically, ultimately rising by over 125% from $2.44 per bushel in 2006 to $5.52 per bushel in 2008. As a result, our gross margins, which peaked at 11.0% in 2006, began declining in 2007, reaching negative 4.7% in 2008. Our average price of corn declined to $3.98 per bushel in 2009, but lower ethanol prices and overhead and depreciation expenses with no corresponding sales from the idled facilities resulted in a gross margin of negative 7.0% in 2009.

From 2006 until the fourth quarter of 2008, when the fourth Pacific Ethanol Plant was completed, we maintained a cost structure commensurate with our construction activities, including substantial project overhead and staffing. Upon completion of the fourth Pacific Ethanol Plant, we sought to alter our cost structure to one more suitable for an operating company. However, beginning in 2008, we began experiencing significant financial constraints and adverse market conditions, and our working capital lines of credit for the Pacific Ethanol Plants were insufficient given substantially higher corn prices and other input costs in the production process.

In late 2008 and early 2009, we idled production at three of the Pacific Ethanol Plants due to adverse market conditions and lack of adequate working capital. Adverse market conditions and our financial constraints continued, resulting in an inability to meet our debt service requirements. We and the ethanol industry, as a whole, experienced significant adverse conditions through most of 2009 as a result of elevated corn prices, reduced demand for transportation fuel and declining ethanol prices, resulting in prolonged negative operating margins. In response to these adverse conditions, as well as severe working capital and liquidity constraints, we reduced production significantly and implemented many cost-saving initiatives.

On May 17, 2009, each of the Plant Owners filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code, or Bankruptcy Code, in the United States Bankruptcy Court for the District of Delaware, or Bankruptcy Court, in an effort to restructure their indebtedness, or Chapter 11 Filings. The Plant Owners continued to operate their businesses and manage their properties as debtors and debtors-in-possession during the pendency of the bankruptcy proceedings.

On June 3, 2009, the Bankruptcy Court approved the Plant Owners' post petition financing facility provided by WestLB, AG, New York Branch, or West LB, and the banks and financial institutions that are from time to time lender parties to the Amended and Restated Debtor-in-Possession Credit Agreement dated June 3, 2009, or as amended, the Post Petition Credit Agreement. The post petition credit facility was intended to fund the Plant Owners' working capital and general corporate needs in the ordinary course of business and allow them to pay these and other amounts as required or permitted to be paid under the terms of the Post Petition Credit Agreement, including the administrative costs associated with the Chapter 11 Filings.

On March 26, 2010, the Plant Owners filed a joint plan of reorganization with the Bankruptcy Court. On April 16, 2010, the Plant Owners filed an amended joint plan of reorganization, or the Plan, with the Bankruptcy Court, which was structured in cooperation with a number of the Plant Owners' secured lenders. The Bankruptcy Court confirmed the Plan at a hearing on June 8, 2010. On June 29, 2010, or Effective Date, the Plant Owners emerged from bankruptcy under the terms of the Plan.

On the Effective Date, approximately $294.4 million in prepetition and post petition secured indebtedness of the Plant Owners was restructured under a Credit Agreement entered into on June 25, 2010 among the Plant Owners, as borrowers, and West LB and other lenders, or Credit Agreement. Under the Plan, the Plant Owners' existing prepetition and post petition secured indebtedness of approximately $294.4 million was restructured to consist of approximately $50.0 million in three-year term loans and a new three-year revolving credit facility of up to $35.0 million to fund working capital requirements of New PE Holdco, LLC, or New PE Holdco.

Under the Plan, on the Effective Date, all of the ownership interests in the Plant Owners were transferred to New PE Holdco, wholly-owned as of that date by some of the prepetition lenders of the Plant Owners and the new lenders to the post-emergence companies under the Credit Agreement. As a result, the Pacific Ethanol Plants are now wholly-owned by New PE Holdco.

Also on the Effective Date, we entered into a Call Option Agreement with New PE Holdco and a number of owners of membership interests in New PE Holdco, whereby we had the right to acquire from the owners membership interests in New PE Holdco in an amount up to 25% of the total membership interests in New PE Holdco for a total price of $30 million in cash (or $1,200,000 for each one percent of membership interest in New PE Holdco).

On the Effective Date, we also entered into an Asset Management Agreement with the Plant Owners under which we agreed to provide management services to the Plant Owners whereby we will effectively operate and maintain the Pacific Ethanol Plants on behalf of the Plant Owners. These services generally include, but are not limited to, administering each Plant Owners' compliance with the Credit Agreement and related financing documents and performing billing, collection, record keeping and other administrative and ministerial responsibilities for each facility. We have agreed to supply all labor and personnel required to perform its services under the agreement, including, but not limited to, the labor and personnel required to operate and maintain the production facilities.

Recent Developments

On October 6, 2010, we raised $35.0 million through the issuance of $35.0 million in principal amount of senior convertible notes, or Initial Convertible Notes, and warrants to purchase an aggregate of 20,588,235 shares of our common stock, or Initial Warrants. See "Management's Discussion and Analysis of Financial Condition and Results Operations—Liquidity and Capital Resources—Convertible Notes." On that same date we sold our 42% interest in Front Range for $18.5 million in cash, paid off our outstanding indebtedness to Lyles United, LLC and Lyles Mechanical Co. in the aggregate amount of approximately $17.0 million and purchased a 20% ownership interest, which represents the single largest interest, in New PE Holdco for an aggregate purchase price of $23.3 million. Of the 20% ownership interest in New PE Holdco we acquired on October 6, 2010, a 12% ownership interest in New PE Holdco was acquired under the Call Option Agreement with New PE Holdco described above.

On January 7, 2011, we issued $35.0 million in principal amount of senior convertible notes, or Convertible Notes, in exchange for the Initial Convertible Notes and issued warrants to purchase an aggregate of 20,588,235 shares of our common stock, or Warrants, in exchange for the Initial Warrants. See "Management's Discussion and Analysis of Financial Condition and Results Operations—Liquidity and Capital Resources—Convertible Notes."

Current Operations

We currently manage the production of ethanol at the Pacific Ethanol Plants under the terms of an asset management agreement with the Plant Owners, all of which are now subsidiaries of New PE Holdco. We also market ethanol and its co-products, including wet distillers grain, or WDG, produced by the Pacific Ethanol Plants under the terms of separate marketing agreements with the Plant Owners whose facilities are operational. We also market ethanol and its co-products to other third parties, and provide transportation, storage and delivery of ethanol through third-party service providers in the Western United States, primarily in California, Nevada, Arizona, Oregon, Colorado, Idaho and Washington.

We have extensive customer relationships throughout the Western United States and extensive supplier relationships throughout the Western and Midwestern United States. Our customers are integrated oil companies and gasoline marketers who blend ethanol into gasoline. We supply ethanol to our customers either from the Pacific Ethanol Plants located within the regions we serve, or with ethanol procured in bulk from other producers. In some cases, we have marketing agreements with ethanol producers to market all of the output of their facilities. Additionally, we have customers who purchase our co-products for animal feed and other uses.

The Pacific Ethanol Plants produce ethanol and its co-products and are comprised of the four facilities described immediately below, three of which are currently operational. See "—Pacific Ethanol Plants" below. If market conditions continue to improve, we may resume operations at the Madera, California facility, subject to the approval of New PE Holdco.

Facility Name	Facility Location	Estimated Annual Capacity (gallons)	Current Operating Status
Magic Valley	Burley, ID	60,000,000	Operating
Columbia	Boardman, OR	40,000,000	Operating
Stockton	Stockton, CA	60,000,000	Operating
Madera	Madera, CA	40,000,000	Idled

Company History

We are a Delaware corporation formed in February 2005. Our main Internet address is http://www.pacificethanol.net. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, amendments to those reports and other Securities and Exchange Commission, or SEC, filings are available free of charge through our website as soon as reasonably practicable after the reports are electronically filed with, or furnished to, the SEC. Our common stock trades on The NASDAQ Capital Market under the symbol "PEIX." The inclusion of our Internet address in this report does not include or incorporate by reference into this report any information contained on our website.

Business Strategy

Our primary goal is to maintain and advance our position as the leading marketer and producer of low carbon renewable fuels in the Western United States. We view the key elements of our business and growth strategy to achieve this objective in short- and long-term perspectives, which include:

Short-Term Strategy

- *Expand ethanol production and marketing revenues, ethanol markets and distribution infrastructure.* We plan to increase our ethanol production and marketing revenues by expanding our relationships with third-party ethanol producers and our ethanol customers to increase sales volumes of ethanol throughout the Western United States at profitable margins. In addition, we plan to maintain and increase sales to animal feed customers in the local markets we serve for WDG. We also plan to expand the market for ethanol by continuing to work with the federal government and state governments to encourage the adoption of policies and standards that promote ethanol as a component in transportation fuels. In addition, we plan to expand our distribution infrastructure by increasing our ability to provide transportation, storage and related logistical services to our customers throughout the Western United States.

- *Operation of Pacific Ethanol Plants.* We provide day-to-day operational expertise to manage the Pacific Ethanol Plants under an asset management agreement. We intend to continue operating the Pacific Ethanol Plants in a part owner-operator capacity. Further, if the idled Pacific Ethanol Plant and other third party facilities become operational, we intend to expand our business by providing management services to those facilities.

- *Focus on cost efficiencies.* We operate the Pacific Ethanol Plants in markets where we believe local characteristics create an opportunity to capture a significant production and shipping cost advantage over competing ethanol production facilities. We believe a combination of factors will enable us to achieve this cost advantage, including:

  - Locations near fuel blending facilities will enable lower ethanol transportation costs and allow timing and logistical advantages over competing locations which require ethanol to be shipped over much longer distances.

- o Locations adjacent to major rail lines will enable the efficient delivery of corn in large unit trains from major corn-producing regions.

- o Locations near large concentrations of dairy and/or beef cattle will enable delivery of WDG over short distances without the need for costly drying processes.

In addition to these location-related efficiencies, we believe that we can continue to increase operating efficiencies by incorporating advanced design elements into the production facilities to take advantage of state-of-the-art technical and operational efficiencies.

Long-Term Strategy

- *Increase our ownership interest in New PE Holdco.* We intend to increase our ownership interest in New PE Holdco as opportunities arise to purchase additional interests from other members and as financial resources and business prospects make the acquisition of additional ownership interests in New PE Holdco advisable.

- *Explore new technologies and renewable fuels*. We are evaluating a number of technologies that may increase the efficiency of our ethanol production facilities and reduce our use of carbon-based fuels. For example, we have installed a reactor system at the Columbia facility from Pursuit Dynamics PLC and we are continuing trials for the purpose of verifying the stated benefits. In addition, we are exploring the feasibility of using different and potentially abundant and cost-effective feedstocks, including cellulosic feed stock, to supplement corn as the raw material used in the production of ethanol. As capital resources become available, we intend to continue pursuing these opportunities, including continuing our efforts to build a cellulosic ethanol demonstration facility in the Northwest United States at the Columbia site. On January 29, 2008, the United States Department of Energy awarded us $24.3 million in matching funds to assist in this project.

- *Evaluate and pursue acquisition opportunities*. We intend to evaluate and pursue opportunities to acquire additional ethanol production, storage and distribution facilities and related infrastructure as financial resources and business prospects make the acquisition of these facilities advisable. In addition, we may also seek to acquire facility sites under development.

Competitive Strengths

We believe that our competitive strengths include the following:

- *Our customer and supplier relationships*. We have developed extensive business relationships with our customers and suppliers. In particular, we have developed extensive business relationships with major and independent un-branded gasoline suppliers who collectively control the majority of all gasoline sales in California and other Western states. In addition, we have developed extensive business relationships with ethanol and grain suppliers throughout the Western and Midwestern United States.

- *Our ethanol distribution network.* We believe that we have a competitive advantage due to our experience in marketing to the segment of customers in major metropolitan and rural markets in the Western United States. We have developed an ethanol distribution network for delivery of ethanol by truck to virtually every significant fuel terminal as well as to numerous smaller fuel terminals throughout California and other Western states. Fuel terminals have limited storage capacity and we have been successful in securing storage tanks at many of the terminals we service. In addition, we have an extensive network of third-party delivery trucks available to deliver ethanol throughout the Western United States.

- *Our operational expertise*. We began managing ethanol production facilities in 2006. We believe that we have obtained operational expertise and know-how that can be used to continue operating the Pacific Ethanol Plants and provide operational services to third party facilities.

- *Our strategic locations*. We believe that our focus on developing and acquiring ethanol production facilities in markets where local characteristics create the opportunity to capture a significant production and shipping cost advantage over competing ethanol production facilities provides us with competitive advantages, including transportation cost, delivery timing and logistical advantages as well as higher margins associated with the local sale of WDG and other co-products.

- *Our low carbon-intensity ethanol.* With the recently enacted California Low Carbon Fuels Standard for transportation fuels, carbon emission standards placed on ethanol produced in California are currently higher than in other states, significantly favoring low carbon-intensity fuels. The ethanol produced in California by the Pacific Ethanol Plants and certain other California producers, all of which is marketed through Kinergy, has a lower carbon-intensity rating than either gasoline or ethanol produced in the mid-west, and is therefore a superior product for our California customers.

- *Modern technologies*. The Pacific Ethanol Plants use the latest production technologies to take advantage of state-of-the-art technical and operational efficiencies in order to achieve lower operating costs and more efficient production of ethanol and its co-products and reduce our use of carbon-based fuels.

- *Our experienced management.* Neil M. Koehler, our President and Chief Executive Officer, has over 20 years of experience in the ethanol production, sales and marketing industry. Mr. Koehler is a Director of the California Renewable Fuels Partnership, a Director of the Renewable Fuels Association, or RFA, and is a frequent speaker on the issue of renewable fuels and ethanol marketing and production. In addition to Mr. Koehler, we have seasoned managers with many years of experience in the ethanol, fuel and energy industries leading our various departments. We believe that the experience of our management over the past two decades and our ethanol marketing operations have enabled us to establish valuable relationships in the ethanol industry and understand the business of marketing and producing ethanol and its co-products.

We believe that these advantages will allow us to capture an increasing share of the total market for ethanol and its co-products.

Industry Overview and Market Opportunity

Overview of Ethanol Market

The primary applications for fuel-grade ethanol in the United States include:

- *Octane enhancer*. On average, regular unleaded gasoline has an octane rating of 87 and premium unleaded gasoline has an octane rating of 91. In contrast, pure ethanol has an average octane rating of 113. Adding ethanol to gasoline enables refiners to produce greater quantities of lower octane blend stock with an octane rating of less than 87 before blending. In addition, ethanol is commonly added to finished regular grade gasoline as a means of producing higher octane mid-grade and premium gasoline.

- *Renewable fuels*. Ethanol is blended with gasoline in order to enable gasoline refiners to comply with a variety of governmental programs, in particular, the national Renewable Fuel Standard, or RFS, program which was enacted to promote alternatives to fossil fuels. See "—Governmental Regulation."

- *Fuel blending*. In addition to its performance and environmental benefits, ethanol is used to extend fuel supplies. As the need for automotive fuel in the United States increases and the dependence on foreign crude oil and refined products grows, the United States is increasingly seeking domestic sources of fuel. Much of the ethanol blending throughout the United States is done for the purpose of extending the volume of fuel sold at the gasoline pump.

The ethanol fuel industry is greatly dependent upon tax policies and environmental regulations that favor the use of ethanol in motor fuel blends in the United States. See "—Governmental Regulation." Ethanol blends have been either wholly or partially exempt from the federal excise tax on gasoline since 1978. The current federal excise tax on gasoline is $0.184 per gallon and is paid at the terminal by refiners and marketers. If the fuel is blended with ethanol, the blender may claim a $0.45 per gallon tax credit for each gallon of ethanol used in the mixture. Federal law also requires the sale of oxygenated fuels in a number of carbon monoxide non-attainment Metropolitan Statistical Areas, or MSAs, during at least four winter months, typically November through February.

In addition, the Energy Independence and Security Act of 2007, which was signed into law in December 2007, significantly increased the prior national RFS. The national RFS significantly increases the mandated use of renewable fuels to approximately 14.0 billion gallons in 2011 and 15.0 billion gallons in 2012, and rises incrementally and peaks at 36.0 billion gallons by 2022. We believe that these increases will bolster demand for ethanol.

Effective January 1, 2010, the State of California implemented a Low Carbon Fuels Standard for transportation fuels. The California Governor's office estimates that the standard will have the effect of increasing current renewable fuels use in California by three to five times by 2020. The State of Oregon implemented a state-wide renewable fuels standard effective January 2008. This standard requires a 10% ethanol blend in every gallon of gasoline and is expected to cause the use of approximately 160 million gallons of ethanol per year in Oregon.

According to the RFA, the domestic ethanol industry produced approximately 13.2 billion gallons of ethanol in 2010, an increase of approximately 22% from the approximately 10.8 billion gallons of ethanol produced in 2009. We believe that the ethanol market in California alone represented approximately 10% of the national market. However, the Western United States has relatively few ethanol facilities and local ethanol production levels are substantially below the local demand for ethanol. The balance of ethanol is shipped via rail from the Midwest to the Western United States. Gasoline and diesel fuel that supply the major fuel terminals are shipped in pipelines throughout portions of the Western United States. Unlike gasoline and diesel fuel, however, ethanol is not shipped in these pipelines because ethanol has an affinity for mixing with water already present in the pipelines. When mixed, water dilutes ethanol and creates significant quality control issues. Therefore, ethanol must be trucked from rail terminals to regional fuel terminals, or blending racks.

We believe that approximately 90% of the ethanol produced in the United States is made in the Midwest from corn. According to the DOE, ethanol is typically blended at 5.7% to 10% by volume, but is also blended at up to 85% by volume for vehicles designed to operate on 85% ethanol. The Environmental Protection Agency, or EPA, recently increased the allowable blend of ethanol in gasoline from 10% to 15%. Compared to gasoline, ethanol is generally considered to be cleaner burning and contains higher octane. We anticipate that the increasing demand for transportation fuels coupled with limited opportunities for gasoline refinery expansions and the growing importance of reducing CO_2 emissions through the use of renewable fuels will generate additional growth in the demand for ethanol in the Western United States.

Ethanol prices, net of tax incentives offered by the federal government, are generally positively correlated to fluctuations in gasoline prices. In addition, we believe that ethanol prices in the Western United States are typically $0.15 to $0.20 per gallon higher than in the Midwest due to the freight costs of delivering ethanol from Midwest production facilities.

According to the DOE, total annual gasoline consumption in the United States is approximately 139 billion gallons and total annual ethanol consumption represented less than 10% of this amount in 2010. We believe that the domestic ethanol industry has substantial potential for growth to initially reach at least 10% of the total annual gasoline consumption in the United States, or approximately 14 billion gallons of ethanol annually and thereafter up to 36 billion gallons of ethanol annually required under the national RFS by 2022, subject to an annual EPA review to adjust targets based on availability of commercially produced advanced and cellulose biofuels.

While we believe that the overall national market for ethanol will grow, we believe that the market for ethanol in specific geographic areas including California could experience either increases or decreases in demand depending on, among other factors, the preferences of petroleum refiners and state policies. See "Risk Factors."

Overview of Ethanol Production Process

The production of ethanol from starch- or sugar-based feedstocks has been refined considerably in recent years, leading to a highly-efficient process that we believe now yields substantially more energy from ethanol and its co-products than is required to make the products. The modern production of ethanol requires large amounts of corn, or other high-starch grains, and water as well as chemicals, enzymes and yeast, and denaturants including unleaded gasoline or liquid natural gas, in addition to natural gas and electricity.

In the dry milling process, corn or other high-starch grains are first ground into meal and then slurried with water to form a mash. Enzymes are then added to the mash to convert the starch into the simple sugar, dextrose. Ammonia is also added for acidic (pH) control and as a nutrient for the yeast. The mash is processed through a high temperature cooking procedure, which reduces bacteria levels prior to fermentation. The mash is then cooled and transferred to fermenters, where yeast is added and the conversion of sugar to ethanol and CO_2 begins.

After fermentation, the resulting "beer" is transferred to distillation, where the ethanol is separated from the residual "stillage." The ethanol is concentrated to 190 proof using conventional distillation methods and then is dehydrated to approximately 200 proof, representing 100% alcohol levels, in a molecular sieve system. The resulting anhydrous ethanol is then blended with about 5% denaturant, which is usually gasoline, and is then ready for shipment to market.

The residual stillage is separated into a coarse grain portion and a liquid portion through a centrifugation process. The soluble liquid portion is concentrated to about 40% dissolved solids by an evaporation process. This intermediate state is called condensed distillers solubles, or syrup. The coarse grain and syrup portions are then mixed to produce WDG or can be mixed and dried to produce dried distillers grains with solubles, or DDGS. Both WDG and DDGS are high-protein animal feed products.

Overview of Distillers Grains Market

Most distillers grains are produced in the Midwest, where producers dry the grains before shipping. Successful and profitable delivery of DDGS from the Midwest to markets in the Western United States faces a number of challenges, including drying of distiller grains which may increase the energy cost to dry the grains and reduce the quality of the feed product, and longer distance to market, which may increase the handling and transportation costs to deliver the grains to market. By not drying the distillers grains and by shipping WDG locally, we believe that we will be able to better preserve the feed value of this product, as the WDG retains a higher percentage of nutrients than DDGS.

Historically, the market price for distillers grains has generally tracked the value of corn. We believe that the market price of DDGS is determined by a number of factors, including the market value of corn, soybean meal and other competitive ingredients, the performance or value of DDGS in a particular feed formulation and general market forces of supply and demand. The market price of distillers grains is also often influenced by nutritional models that calculate the feed value of distillers grains by nutritional content, as well as reliability of consistent supply.

Customers

We purchase ethanol from the Pacific Ethanol Plants and other third-parties and resell ethanol to various customers in the Western United States. We also arrange for transportation, storage and delivery of ethanol purchased by our customers through our agreements with third-party service providers. In addition, we purchase WDG from the Pacific Ethanol Plants and sell WDG to customers comprised of dairies and feedlots located near the Pacific Ethanol Plants.

During 2010 and 2009, we produced or purchased ethanol from third parties and resold an aggregate of approximately 272 million and 173 million gallons of fuel-grade ethanol to approximately 57 and 60 customers, respectively. Sales to our two largest customers in 2010 and 2009 represented approximately 24% and 32%, of our net sales, respectively. These customers, each of whom accounted for 10% or more of our net sales in 2010 and 2009, were Chevron Products USA and Valero Energy Corporation, or Valero. Sales to each of our other customers represented less than 10% of our net sales in each of 2010 and 2009.

Most of the major metropolitan areas in the Western United States have fuel terminals served by rail, but other major metropolitan areas and more remote smaller cities and rural areas do not. We believe that we have a competitive advantage due to our experience in marketing to the segment of customers in major metropolitan and rural markets in the Western United States. We manage the complicated logistics of shipping ethanol purchased from third-parties from the Midwest by rail to intermediate storage locations throughout the Western United States and trucking the ethanol from these storage locations to blending racks where the ethanol is blended with gasoline. We believe that by establishing an efficient service for truck deliveries to these more remote locations, we have differentiated ourselves from our competitors. In addition, by producing ethanol in the Western United States, we believe that we will benefit from our ability to increase spot sales of ethanol from this additional supply following ethanol price spikes caused from time to time by rail delays in delivering ethanol from the Midwest to the Western United States. In addition to producing ethanol, we produce ethanol co-products, including WDG. We endeavor to position WDG as the protein feed of choice for cattle based on its nutritional composition, consistency of quality and delivery, ease of handling and its mixing ability with other feed ingredients. We are one of the few WDG producers with production facilities located in the Western United States and we primarily sell our WDG to dairy farmers in close proximity to the Pacific Ethanol Plants.

Suppliers

Our marketing operations are dependent upon various third-party producers of fuel-grade ethanol. In addition, we provide ethanol transportation, storage and delivery services through third-party service providers with whom we have contracted to receive ethanol at agreed upon locations from our suppliers and to store and/or deliver the ethanol to agreed upon locations on behalf of our customers. These contracts generally run from year-to-year, subject to termination by either party upon advance written notice before the end of the then current annual term.

During 2010 and 2009, we purchased fuel-grade ethanol and corn, the largest component in producing ethanol, from our suppliers. Purchases from our three largest suppliers in 2010 represented approximately 60% of our total ethanol and corn purchases. Purchases from our four largest suppliers in 2009 represented approximately 55% of our total ethanol and corn purchases. Purchases from each of our other suppliers represented less than 10% of total ethanol and corn purchases in each of 2010 and 2009.

The ethanol production operations of the Pacific Ethanol Plants are dependent upon various raw materials suppliers, including suppliers of corn, natural gas, electricity and water. The cost of corn is the most important variable cost associated with the production of ethanol. An ethanol facility must be able to efficiently ship corn from the Midwest via rail and cheaply and reliably truck ethanol to local markets. We believe that our existing grain receiving facilities at the Pacific Ethanol Plants are some of the most efficient grain receiving facilities in the United States. We source corn for the Pacific Ethanol Plants using standard contracts, including spot purchase, forward purchase and basis contracts. When resources are available to do so, we seek to limit the exposure of the Pacific Ethanol Plants to raw material price fluctuations by purchasing forward a portion of their corn requirements on a fixed price basis and by purchasing corn and other raw materials future contracts. In addition, to help protect against supply disruptions, the Pacific Ethanol Plants may maintain inventories of corn.

Pacific Ethanol Plants

The table below provides an overview of the Pacific Ethanol Plants owned by New PE Holdco and operated by us. Three of the Pacific Ethanol Plants are currently operational. If market conditions continue to improve, we may resume operations at the Madera, California facility, subject to the approval of New PE Holdco.

	Madera Facility	**Columbia Facility**	**Magic Valley Facility**	**Stockton Facility**
Location	Madera, CA	Boardman, OR	Burley, ID	Stockton, CA
Quarter/Year operations began	4th Qtr., 2006	3rd Qtr., 2007	2nd Qtr., 2008	3rd Qtr., 2008
Operating status	Idled	Operating	Operating	Operating
Annual design basis ethanol production capacity (in millions of gallons)	35	35	50	50
Approximate maximum annual ethanol production capacity (in millions of gallons)	40	40	60	60
Ownership by New PE Holdco	100%	100%	100%	100%
Primary energy source	Natural Gas	Natural Gas	Natural Gas	Natural Gas
Estimated annual WDG production capacity (in thousands of tons)	293	293	418	418

Commodity Risk Management

We may seek to employ one or more risk mitigation techniques when sufficient working capital is available. We may seek to mitigate our exposure to commodity price fluctuations by purchasing forward a portion of our corn and natural gas requirements through fixed-price or variable-price contracts with our suppliers, as well as entering into derivative contracts for ethanol, corn and natural gas prices. To mitigate ethanol inventory price risks, we may sell a portion of our production forward under fixed- or index-price contracts, or both. We may hedge a portion of the price risks by selling exchange-traded futures contracts. Proper execution of these risk mitigation strategies can reduce the volatility of our gross profit margins.

Marketing Arrangements

In addition to our marketing agreements with the Plant Owners whose facilities are operational to market all of the ethanol produced at those Pacific Ethanol Plants, we have exclusive ethanol marketing agreements with third-party ethanol producers, including Calgren Renewable Fuels, LLC and Front Range, to market and sell their entire ethanol production volumes. Calgren Renewable Fuels, LLC owns and operates an ethanol production facility in Pixley, California with annual production capacity of 55 million gallons. Front Range owns and operates an ethanol production facility in Windsor, Colorado with annual production capacity of 50 million gallons. We intend to evaluate and pursue opportunities to enter into marketing arrangements with other ethanol producers as business prospects make these marketing arrangements advisable.

Competition

We operate in the highly competitive ethanol marketing and production industry. The largest ethanol producers in the United States are Archer Daniels Midland Company, or ADM, and Valero, collectively with over 20% of the total installed capacity of ethanol in the United States. In addition, there are many mid-size producers with several plants under ownership, smaller producers with one or two plants, and several ethanol marketers that create significant competition. Overall, we believe there are over 200 ethanol facilities in the United States with an installed capacity of approximately 13.5 billion gallons and many brokers and marketers with whom we compete for sales of ethanol and its co-products.

We believe that our competitive strengths include our strategic locations in the Western United States, our extensive ethanol distribution network, our extensive customer and supplier relationships, our use of modern technologies at our production facilities and our experienced management. We believe that these advantages will allow us to capture an increasing share of the total market for ethanol and its co-products and earn favorable margins on ethanol and its co-products that we produce.

Our strategic focus on particular geographic locations designed to exploit cost efficiencies may nevertheless result in higher than expected costs as a result of more expensive raw materials and related shipping costs, including corn, which generally must be transported from the Midwest. If the costs of producing and shipping ethanol and its co-products over short distances are not advantageous relative to the costs of obtaining raw materials from the Midwest, then the planned benefits of our strategic locations may not be realized.

Governmental Regulation

Our business is subject to federal, state and local laws and regulations relating to the protection of the environment and in support of the corn and ethanol industries. These laws, their underlying regulatory requirements and their enforcement, some of which are described below, impact, or may impact, our existing and proposed business operations by imposing:

- restrictions on our existing and proposed business operations and/or the need to install enhanced or additional controls;
- the need to obtain and comply with permits and authorizations;

- liability for exceeding applicable permit limits or legal requirements, in some cases for the remediation of contaminated soil and groundwater at our facilities, contiguous and adjacent properties and other properties owned and/or operated by third parties; and

- specifications for the ethanol we market and produce.

In addition, some of the governmental regulations to which we are subject are helpful to our ethanol marketing and production business. The ethanol fuel industry is greatly dependent upon tax policies and environmental regulations that favor the use of ethanol in motor fuel blends in North America. Some of the governmental regulations applicable to our ethanol marketing and production business are briefly described below.

Federal Excise Tax Exemption

The current federal excise tax on gasoline is $0.184 per gallon, and is paid at the terminal by refiners and marketers. If the fuel is blended with ethanol, the blender may claim a $0.45 per gallon tax credit for each gallon of ethanol used in the mixture. The expiration date of the federal excise tax exemption is December 31, 2011.

Clean Air Act Amendments of 1990

In November 1990, a comprehensive amendment to the Clean Air Act of 1977, or Clean Air Act, established a series of requirements and restrictions for gasoline content designed to reduce air pollution in identified problem areas of the United States. The two principal components affecting motor fuel content are the oxygenated fuels program, which is administered by states under federal guidelines, and a federally supervised reformulated gasoline, or RFG, program.

Oxygenated Fuels Program

Federal law requires the sale of oxygenated fuels in a number of carbon monoxide non-attainment MSAs during at least four winter months, typically November through February. Any additional MSAs not in compliance for a period of two consecutive years may also be included in the program. The EPA Administrator is afforded flexibility in requiring a shorter or longer period of use depending upon available supplies of oxygenated fuels or the level of non-attainment. This law currently affects the Los Angeles area, where over 150 million gallons of ethanol are blended with gasoline each winter.

Reformulated Gasoline Program

The Clean Air Act Amendments of 1990 established special standards effective January 1, 1995 for the most polluted ozone non-attainment areas: Los Angeles Area, Baltimore, Chicago Area, Houston Area, Milwaukee Area, New York City Area, Hartford, Philadelphia Area and San Diego, with provisions to add other areas in the future if conditions warrant. California's San Joaquin Valley, the location of both the Madera and Stockton facilities, was added in 2002. At the outset of the RFG program there were a total of 96 MSAs not in compliance with clean air standards for ozone, which represents approximately 60% of the national market.

The RFG program also includes a provision that allows individual states to "opt into" the federal program by request of the governor, to adopt standards promulgated by California that are stricter than federal standards, or to offer alternative programs designed to reduce ozone levels. Nearly the entire Northeast and middle Atlantic areas from Washington, D.C. to Boston not under the federal mandate have "opted into" the federal standards.

These state mandates in recent years have created a variety of gasoline grades to meet different regional environmental requirements. The RFG program accounts for about 30% of nationwide gasoline consumption. California refiners blend a minimum of 2.0% oxygen by weight, which is the equivalent of 5.7% ethanol in every gallon of gasoline, or roughly 1.0 billion gallons of ethanol per year in California alone.

National Energy Legislation

In addition, the Energy Independence and Security Act of 2007, which was signed into law in December 2007, significantly increased the prior national RFS. The national RFS significantly increases the mandated use of renewable fuels to approximately 14.0 billion gallons in 2011 and 15.0 billion gallons in 2012, and rises incrementally and peaks at 36.0 billion gallons by 2022.

E15 (a blend of gasoline and ethanol)

On October 13, 2010, the EPA partially granted a waiver request application submitted under Section 211(f)(4) of the Clean Air Act. This partial waiver allows fuel and fuel additive manufacturers to introduce into commerce gasoline that contains greater than 10 volume percent of ethanol, up to 15 volume percent of ethanol, or E15, for use in some motor vehicles once other conditions are fulfilled. This waiver only applies to vehicles from model year 2001 and beyond. It is important to remember that there are a number of additional steps that must be completed – some of which are not under EPA control – to allow the sale and distribution of E15. These include, but are not limited to, submission of a complete E15 fuels registration application by industry, and changes to some states' laws to allow for the use of E15.

State Energy Legislation and Regulations

State energy legislation and regulations may affect the demand for ethanol. California recently passed legislation regulating the total emissions of CO_2 from vehicles and other sources. In 2006, the State of Washington passed a statewide renewable fuel standard effective December 1, 2008. The State of Oregon implemented a state-wide renewable fuels standard effective January 2008. This standard requires a 10% ethanol blend in every gallon of gasoline and is expected to cause the use of approximately 160 million gallons of ethanol per year in Oregon. We believe other states may also enact their own renewable fuel standards.

In January 2007, California's Governor signed an executive order directing the California Air Resources Board to implement California's Low Carbon Fuels Standard for transportation fuels. The Governor's office estimates that the standard will have the effect of increasing current renewable fuels use in California by three to five times by 2020.

The State of California has established a policy to support ethanol produced in California with the California Ethanol Producer Incentive Program, or CEPIP, a producer incentive which offers up to $0.25 per gallon when ethanol production profitability is less than prescribed levels determined by the California Energy Commission, or CEC. The Pacific Ethanol Plants located in California are eligible for the CEPIP, and the Stockton facility is currently participating in the program. This program began in late 2010 and is to continue for four years. No assurances can be given that the California legislature will continue to fund the CEPIP or that the CEC will not alter the program thresholds, participant eligibility or other policy choices that may impact the ability of the Pacific Ethanol Plants located in California to be eligible for the CEPIP.

Additional Environmental Regulations

In addition to the governmental regulations applicable to the ethanol marketing and production industries described above, our business is subject to additional federal, state and local environmental regulations, including regulations established by the EPA, the Regional Water Quality Control Board, the San Joaquin Valley Air Pollution Control District and the California Air Resources Board. We cannot predict the manner or extent to which these regulations will harm or help our business or the ethanol production and marketing industry in general.

Employees

As of March 31, 2011, we had approximately 145 full-time employees. We believe that our employees are highly-skilled, and our success will depend in part upon our ability to retain our employees and attract new qualified employees, many of whom are in great demand. We have never had a work stoppage or strike, and no employees are presently represented by a labor union or covered by a collective bargaining agreement. We consider our relations with our employees to be good.

Item 1A. Risk Factors.

Risks Related to our Business

We have incurred significant losses and negative operating cash flow in the past and we will likely incur significant losses and negative operating cash flow in the foreseeable future. Continued losses and negative operating cash flow will hamper our operations and prevent us from expanding our business.

We have incurred significant losses and negative operating cash flow in the past. For 2009 and 2008, we incurred net losses of approximately $308.7 million and $199.2 million, respectively. For 2009 and 2008, we incurred negative operating cash flow of approximately $6.3 million and $55.2 million, respectively. We reported net income of $69.5 million for 2010, primarily due to a $119.4 million net gain in connection with the completion of the bankruptcy proceedings of our former indirect wholly-owned subsidiaries. We believe that we will likely incur significant losses and negative operating cash flow in the foreseeable future. We expect to rely on cash on hand, cash, if any, generated from our operations and cash, if any, generated from any future financing activities, if any, to fund all of the cash requirements of our business. Continued losses and negative operating cash flow may hamper our operations and impede us from expanding our business. Continued losses and negative operating cash flow are also likely to make our capital raising needs more acute while limiting our ability to raise additional financing on favorable terms.

We may not have cash on hand to satisfy our obligations under the Convertible Notes when required under the terms of the Convertible Notes.

We are obligated to make principal and interest payments under the Convertible Notes prior to the maturity of the Convertible Notes and the entire outstanding principal amount of the Convertible Notes will become due and payable by us at maturity. We currently anticipate paying all amounts due under the Convertible Notes in shares of our common stock. However, we may be prohibited from satisfying our obligations under the Convertible Notes in shares of our common stock in a number of circumstances. Our ability to pay the amounts due under the Convertible Notes in cash will be subject to our liquidity position at the time. We cannot assure you that we will have sufficient financial resources or be able to arrange financing to pay the amounts due under the Convertible Notes in cash on any date that we would be required to do so under the terms of the Convertible Notes. While we could seek to obtain third-party financing to pay for any amounts due in cash, third-party financing may not be available on commercially reasonable terms, if at all.

We may not have the ability to redeem the Convertible Notes when required under the terms of the Convertible Notes.

Holders of the Convertible Notes may require us to redeem for cash all or a portion of their Convertible Notes upon the occurrence of an event of default under the Convertible Notes or change of control events. Our ability to redeem the Convertible Notes in cash, if we are required to do so, is subject to our liquidity position at the time. We cannot assure you that we will have sufficient financial resources or be able to arrange financing to pay the redemption price of the Convertible Notes on any date that we would be required to do so under the terms of the Convertible Notes. While we could seek to obtain third-party financing to pay for any amounts due in cash upon these events, third-party financing may not be available on commercially reasonable terms, if at all.

Provisions of the Convertible Notes could discourage an acquisition of us by a third party.

A number of provisions of the Convertible Notes could make it more difficult or more expensive for a third party to acquire us. Upon the occurrence of transactions constituting a change of control, holders of the Convertible Notes will have the right, at their option, to require us to redeem all or a portion of their Convertible Notes in cash. In addition, under the terms of the Convertible Notes, we may not enter into specified mergers or acquisitions unless, among other things, the surviving person or entity assumes our obligations under the Convertible Notes or the holders of the Convertible Notes waive their right to have the surviving person or entity assume our obligations under the Convertible Notes. These provisions may make it more difficult or discourage a takeover of Pacific Ethanol.

We are a minority member of New PE Holdco with limited control over that entity's business decisions. We are therefore dependent upon the business judgment and conduct of the board of directors of that entity. As a result, our interests may not be as well served as if we were in control of New PE Holdco, which could adversely affect its contribution to our results of operations and our business prospects related to that entity.

New PE Holdco owns, and we operate, the Pacific Ethanol Plants. We own 20% of New PE Holdco, which represents a minority interest in that entity. New PE Holdco is managed by a board of directors. Although we have representation on the board of directors, we do not control the actions of the board of directors and are therefore largely dependent upon its business judgment and conduct. As a result, our interests may not be as well served as if we were in control of New PE Holdco. Accordingly, the contribution by New PE Holdco to our results of operations and our business prospects related to that entity may be adversely affected by our lack of control over that entity.

The termination of the asset management agreement and marketing agreements to which we are a party relating to the Pacific Ethanol Plants would lead to a significant decline in our sales and profitability.

A significant amount of our revenues are derived from an asset management agreement with the Plant Owners under which we manage the production and operations of the Pacific Ethanol Plants. The asset management agreement has a term of six months and automatically renews for successive six month terms unless terminated by either party by giving notice 60 days prior to the end of any six month period. We also derive revenues from our activities related to the marketing of the ethanol and WDG produced by the Pacific Ethanol Plants under the terms of separate marketing agreements with the Plant Owners whose facilities are operational. If the asset management agreement or the marketing agreements are terminated for any reason, our revenues and financial condition will decline.

We recognized impairment charges in 2009 and may recognize additional impairment charges in the future.

For 2009, we recognized asset impairment charges in the aggregate amount of $252.4 million. These impairment charges primarily related to our previously wholly-owned ethanol facilities. We performed our forecast of expected future cash flows of these facilities over their estimated useful lives. The forecasts of expected future cash flows are heavily dependent upon management's estimates and probability analysis of various scenarios including market prices for ethanol, our primary product, and corn, our primary production input. Both ethanol and corn costs have fluctuated significantly in the past year, therefore these estimates are highly subjective and are management's best estimates at this time. During 2010, as a result of the sale of our 42% ownership interest in Front Range, we incurred an additional loss on the difference between our cost basis of the investment in Front Range and the price at which we sold our investment. We may also incur additional impairments in the future on current or future long-lived assets.

The results of operations of the Pacific Ethanol Plants and their ability to operate at a profit is largely dependent on managing the spreads among the prices of corn, natural gas, ethanol and WDG, the prices of which are subject to significant volatility and uncertainty.

The results of operations of the Pacific Ethanol Plants are highly impacted by commodity prices, including the spreads between the cost of corn and natural gas that they must purchase, and the price of ethanol and WDG that they sell. Prices and supplies are subject to and determined by market forces over which we have no control, such as weather, domestic and global demand, shortages, export prices, and various governmental policies in the United States and around the world. As a result of price volatility for these commodities, our operating results may fluctuate substantially. Increases in corn prices or natural gas or decreases in ethanol or WDG prices may make it unprofitable to operate the Pacific Ethanol Plants. No assurance can be given that corn and natural gas can be purchased at, or near, current or any particular prices and that ethanol or WDG will sell at, or near, current or any particular prices. Consequently, our results of operations and financial position may be adversely affected by increases in the price of corn or natural gas or decreases in the price of ethanol or WDG.

In early 2006, the spread between ethanol and corn prices was at an historically high level, driven in large part by oil companies removing a competitive product, methyl tertiary butyl ether (MTBE), from the fuel stream and replacing it with ethanol in a relatively short time period. However, since that time, this spread has fluctuated widely and narrowed significantly. Fluctuations are likely to continue to occur. A sustained narrow spread or any further reduction in the spread between ethanol and corn prices, whether as a result of sustained high or increased corn prices or sustained low or decreased ethanol prices, would adversely affect our results of operations and financial position. Further, combined revenues from sales of ethanol and WDG could decline below the marginal cost of production, which could cause us to suspend production of ethanol and WDG at some or all of the Pacific Ethanol Plants.

Increased ethanol production may cause a decline in ethanol prices or prevent ethanol prices from rising, and may have other negative effects, adversely impacting our results of operations, cash flows and financial condition.

We believe that the most significant factor influencing the price of ethanol has been the substantial increase in ethanol production in recent years. Domestic ethanol production capacity has increased steadily from an annualized rate of 1.5 billion gallons per year in January 1999 to 13.2 billion gallons in 2010 according to the RFA. See “Business—Governmental Regulation.” However, increases in the demand for ethanol may not be commensurate with increases in the supply of ethanol, thus leading to lower ethanol prices. Demand for ethanol could be impaired due to a number of factors, including regulatory developments and reduced United States gasoline consumption. Reduced gasoline consumption has occurred in the past and could occur in the future as a result of increased gasoline or oil prices.

The market price of ethanol is volatile and subject to large fluctuations, which may cause our profitability or losses to fluctuate significantly.

The market price of ethanol is volatile and subject to large fluctuations. The market price of ethanol is dependent upon many factors, including the supply of ethanol and the price of gasoline, which is in turn dependent upon the price of petroleum which is highly volatile and difficult to forecast. For example, our average sales price of ethanol increased by 9% in 2010 after decreasing by 20% in 2009 from the prior year’s average sales price per gallon. Fluctuations in the market price of ethanol may cause our profitability or losses to fluctuate significantly.

Disruptions in ethanol production infrastructure may adversely affect our business, results of operations and financial condition.

Our business depends on the continuing availability of rail, road, port, storage and distribution infrastructure. In particular, due to limited storage capacity at the Pacific Ethanol Plants and other considerations related to production efficiencies, the Pacific Ethanol Plants depend on just-in-time delivery of corn. The production of ethanol also requires a significant and uninterrupted supply of other raw materials and energy, primarily water, electricity and natural gas. The prices of electricity and natural gas have fluctuated significantly in the past and may fluctuate significantly in the future. Local water, electricity and gas utilities may not be able to reliably supply the water, electricity and natural gas that the Pacific Ethanol Plants will need or may not be able to supply those resources on acceptable terms. Any disruptions in the ethanol production infrastructure, whether caused by labor difficulties, earthquakes, storms, other natural disasters or human error or malfeasance or other reasons, could prevent timely deliveries of corn or other raw materials and energy and may require the Pacific Ethanol Plants to halt production which could have a material adverse effect on our business, results of operations and financial condition.

We and the Pacific Ethanol Plants may engage in hedging transactions and other risk mitigation strategies that could harm our results of operations.

In an attempt to partially offset the effects of volatility of ethanol prices and corn and natural gas costs, the Pacific Ethanol Plants may enter into contracts to fix the price of a portion of their ethanol production or purchase a portion of their corn or natural gas requirements on a forward basis. In addition, we may engage in other hedging transactions involving exchange-traded futures contracts for corn, natural gas and unleaded gasoline from time to time. The financial statement impact of these activities is dependent upon, among other things, the prices involved and our ability to sell sufficient products to use all of the corn and natural gas for which forward commitments have been made. Hedging arrangements also expose us to the risk of financial loss in situations where the other party to the hedging contract defaults on its contract or, in the case of exchange-traded contracts, where there is a change in the expected differential between the underlying price in the hedging agreement and the actual prices paid or received by us. As a result, our results of operations and financial position may be adversely affected by fluctuations in the price of corn, natural gas, ethanol and unleaded gasoline.

Operational difficulties at the Pacific Ethanol Plants could negatively impact sales volumes and could cause us to incur substantial losses.

Operations at the Pacific Ethanol Plants are subject to labor disruptions, unscheduled downtimes and other operational hazards inherent in the ethanol production industry, including equipment failures, fires, explosions, abnormal pressures, blowouts, pipeline ruptures, transportation accidents and natural disasters. Some of these operational hazards may cause personal injury or loss of life, severe damage to or destruction of property and equipment or environmental damage, and may result in suspension of operations and the imposition of civil or criminal penalties. Insurance obtained by the Pacific Ethanol Plants may not be adequate to fully cover the potential operational hazards described above or the Pacific Ethanol Plants may not be able to renew this insurance on commercially reasonable terms or at all.

Moreover, the production facilities at the Pacific Ethanol Plants may not operate as planned or expected. All of these facilities are designed to operate at or above a specified production capacity. The operation of these facilities is and will be, however, subject to various uncertainties. As a result, these facilities may not produce ethanol and its co-products at expected levels. In the event any of these facilities do not run at their expected capacity levels, our business, results of operations and financial condition may be materially and adversely affected.

The United States ethanol industry is highly dependent upon myriad federal and state legislation and regulation and any changes in legislation or regulation could have a material adverse effect on our results of operations and financial condition.

The elimination or reduction of federal excise tax incentives could have a material adverse effect on our results of operations and our financial condition.

The amount of ethanol production capacity in the United States exceeds the mandated usage of renewable biofuels. Ethanol consumption above mandated amounts is primarily based upon the economic benefit derived by blenders, including benefits received from federal excise tax incentives. Therefore, the production of ethanol is made significantly more competitive by federal tax incentives. The federal excise tax incentive program, which is scheduled to expire on December 31, 2011, allows gasoline distributors who blend ethanol with gasoline to receive a federal excise tax rate reduction for each blended gallon they sell regardless of the blend rate. The current federal excise tax on gasoline is $0.184 per gallon, and is paid at the terminal by refiners and marketers. If the fuel is blended with ethanol, the blender may claim a $0.45 per gallon tax credit for each gallon of ethanol used in the mixture. The 2008 Farm Bill enacted into law reduced federal excise tax incentives from $0.51 per gallon in 2008 to $0.45 per gallon in 2009. The federal excise tax incentive program might not be renewed prior to its expiration on December 31, 2011, or if renewed, it may be renewed on terms significantly less favorable than current tax incentives. The elimination or significant reduction in the federal excise tax incentive program could reduce discretionary blending and have a material adverse effect on our results of operations and our financial condition.

Various studies have criticized the efficiency of ethanol in general, and corn-based ethanol in particular, which could lead to the reduction or repeal of incentives and tariffs that promote the use and domestic production of ethanol or otherwise negatively impact public perception and acceptance of ethanol as an alternative fuel.

Although many trade groups, academics and governmental agencies have supported ethanol as a fuel additive that promotes a cleaner environment, others have criticized ethanol production as consuming considerably more energy and emitting more greenhouse gases than other biofuels and as potentially depleting water resources. Other studies have suggested that ethanol negatively impacts consumers by causing higher prices for dairy, meat and other foodstuffs from livestock that consume corn. If these views gain acceptance, support for existing measures promoting the use and domestic production of corn-based ethanol could decline, leading to a reduction or repeal of these measures. These views could also negatively impact public perception of the ethanol industry and acceptance of ethanol as a component for blending in transportation fuel.

Waivers or repeal of the national RFS's minimum levels of renewable fuels included in gasoline could have a material adverse effect on our results of operations.

Shortly after passage of the Energy Independence and Security Act of 2007, which increased the minimum mandated required usage of ethanol, a Congressional sub-committee held hearings on the potential impact of the national RFS on commodity prices. While no action was taken by the sub-committee towards repeal of the national RFS, any attempt by Congress to re-visit, repeal or grant waivers of the national RFS could adversely affect demand for ethanol and could have a material adverse effect on our results of operations and financial condition.

While the Energy Independence and Security Act of 2007 imposes the national RFS, it does not mandate only the use of ethanol.

The Energy Independence and Security Act of 2007 imposes the national RFS, but does not mandate only the use of ethanol. While the RFA expects that ethanol should account for the largest share of renewable fuels produced and consumed under the national RFS, the national RFS is not limited to ethanol and also includes biodiesel and any other liquid fuel produced from biomass or biogas.

The ethanol production and marketing industry is extremely competitive. Many of the significant competitors of the Pacific Ethanol Plants have greater production and financial resources than New PE Holdco does and one or more of these competitors could use their greater resources to gain market share at the expense of New PE Holdco. In addition, a number of New PE Holdco's suppliers may circumvent the marketing services we provide to New PE Holdco, causing our sales and profitability to decline.

The ethanol production and marketing industry is extremely competitive. Many of New PE Holdco's and our significant competitors in the ethanol production and marketing industry, including ADM, Valero and Green Plains Renewable Energy, have substantially greater production and/or financial resources than we do. As a result, our competitors may be able to compete more aggressively and sustain that competition over a longer period of time than New PE Holdco or we could. Successful competition will require a continued high level of investment in marketing and customer service and support. New PE Holdco's and our limited resources relative to many significant competitors may cause New PE Holdco to fail to anticipate or respond adequately to new developments and other competitive pressures. This failure could reduce New PE Holdco's and our competitiveness and cause a decline in market share, sales and profitability. Even if sufficient funds are available, we and New PE Holdco may not be able to make the modifications and improvements necessary to compete successfully.

We and New PE Holdco also face increasing competition from international suppliers. Currently, international suppliers produce ethanol primarily from sugar cane and have cost structures that are generally substantially lower than the cost structures of the Pacific Ethanol Plants. Any increase in domestic or foreign competition could cause the Pacific Ethanol Plants to reduce their prices and take other steps to compete effectively, which could adversely affect their and our results of operations and financial condition.

In addition, some of New PE Holdco's and our suppliers are potential competitors and, especially if the price of ethanol reaches historically high levels, they may seek to capture additional profits by circumventing our marketing services in favor of selling directly to our customers. If one or more of our major suppliers, or numerous smaller suppliers, circumvent our marketing services, our sales and profitability may decline.

The high concentration of our sales within the ethanol marketing and production industry could result in a significant reduction in sales and negatively affect our profitability if demand for ethanol declines.

We expect to be completely focused on the marketing and production of ethanol and its co-products for the foreseeable future. We may be unable to shift our business focus away from the marketing and production of ethanol to other renewable fuels or competing products. Accordingly, an industry shift away from ethanol or the emergence of new competing products may reduce the demand for ethanol. A downturn in the demand for ethanol would likely materially and adversely affect our sales and profitability.

The volatility in the financial and commodities markets and sustained weakening of the economy could further significantly impact our business and financial condition and may limit our ability to raise additional capital.

As widely reported, financial markets in the United States and the rest of the world have experienced extreme disruption, including, among other things, extreme volatility in securities and commodities prices, as well as severely diminished liquidity and credit availability. As a result, we believe that our ability to access capital markets and raise funds required for our operations may be severely restricted at a time when we need to do so, which could have a material adverse effect on our ability to meet our current and future funding requirements and on our ability to react to changing economic and business conditions. We are not able to predict the duration or severity of any current or future disruption in financial markets, fluctuations in the price of crude oil or other adverse economic conditions in the United States. However, if economic conditions worsen, it is likely that these factors would have a further adverse effect on our results of operations and future prospects and may limit our ability to raise additional capital.

In addition to the ethanol produced by the Pacific Ethanol Plants, we also depend on a small number of third-party suppliers for a significant portion of the total amount of ethanol that we sell. If any of these suppliers does not continue to supply us with ethanol in adequate amounts, we may be unable to satisfy the demands of our customers and our sales, profitability and relationships with our customers will be adversely affected.

In addition to the ethanol produced by the Pacific Ethanol Plants, we also depend on a small number of third-party suppliers for a significant portion of the ethanol that we sell. We expect to continue to depend for the foreseeable future upon a small number of third-party suppliers for a significant portion of the total amount of the ethanol that we sell. Our third-party suppliers are primarily located in the Midwestern United States. The delivery of ethanol from these suppliers is therefore subject to delays resulting from inclement weather and other conditions. If any of these suppliers is unable or declines for any reason to continue to supply us with ethanol in adequate amounts, we may be unable to replace that supplier and source other supplies of ethanol in a timely manner, or at all, to satisfy the demands of our customers. If this occurs, our sales, profitability and our relationships with our customers will be adversely affected.

We and New PE Holdco may be adversely affected by environmental, health and safety laws, regulations and liabilities.

We and New PE Holdco are subject to various federal, state and local environmental laws and regulations, including those relating to the discharge of materials into the air, water and ground, the generation, storage, handling, use, transportation and disposal of hazardous materials, and the health and safety of our employees and the employees of the Pacific Ethanol Plants. In addition, some of these laws and regulations require the Pacific Ethanol Plants to operate under permits that are subject to renewal or modification. These laws, regulations and permits can often require expensive pollution control equipment or operational changes to limit actual or potential impacts to the environment. A violation of these laws and regulations or permit conditions can result in substantial fines, natural resource damages, criminal sanctions, permit revocations and/or facility shutdowns. In addition, we and the Pacific Ethanol Plants have made, and expect to make, significant capital expenditures on an ongoing basis to comply with increasingly stringent environmental laws, regulations and permits.

We and New PE Holdco may be liable for the investigation and cleanup of environmental contamination at each of the properties that New PE Holdco owns or that we operate, including the Pacific Ethanol Plants, and at off-site locations where we arrange for the disposal of hazardous substances. If these substances have been or are disposed of or released at sites that undergo investigation and/or remediation by regulatory agencies, we may be responsible under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other environmental laws for all or part of the costs of investigation and/or remediation, and for damages to natural resources. We may also be subject to related claims by private parties alleging property damage and personal injury due to exposure to hazardous or other materials at or from those properties. Some of these matters may require us to expend significant amounts for investigation, cleanup or other costs.

In addition, new laws, new interpretations of existing laws, increased governmental enforcement of environmental laws or other developments could require us to make significant additional expenditures. Continued government and public emphasis on environmental issues can be expected to result in increased future investments for environmental controls at the Pacific Ethanol Plants. Present and future environmental laws and regulations, and interpretations of those laws and regulations, applicable to New PE Holdco's and our operations, more vigorous enforcement policies and discovery of currently unknown conditions may require substantial expenditures that could have a material adverse effect on our results of operations and financial condition.

The hazards and risks associated with producing and transporting our products (including fires, natural disasters, explosions and abnormal pressures and blowouts) may also result in personal injury claims or damage to property and third parties. As protection against operating hazards, we maintain insurance coverage against some, but not all, potential losses. However, we could sustain losses for uninsurable or uninsured risks, or in amounts in excess of existing insurance coverage. Events that result in significant personal injury or damage to our property or third parties or other losses that are not fully covered by insurance could have a material adverse effect on our results of operations and financial condition.

If we are unable to attract and retain key personnel, our ability to operate effectively may be impaired.

Our ability to operate our business and implement strategies depends, in part, on the efforts of our executive officers and other key employees. Our future success will depend on, among other factors, our ability to retain our current key personnel and attract and retain qualified future key personnel, particularly executive management. Failure to attract or retain key personnel could have a material adverse effect on our business and results of operations.

We depend on a small number of customers for the majority of our sales. A reduction in business from any of these customers could cause a significant decline in our overall sales and profitability.

The majority of our sales are generated from a small number of customers. During each of 2010 and 2009, sales to our two largest customers, each of whom accounted for 10% or more of our net sales, represented approximately 24% and 32%, respectively. We expect that we will continue to depend for the foreseeable future upon a small number of customers for a significant portion of our sales. Our agreements with these customers generally do not require them to purchase any specified amount of ethanol or dollar amount of sales or to make any purchases whatsoever. Therefore, in any future period, our sales generated from these customers, individually or in the aggregate, may not equal or exceed historical levels. If sales to any of these customers cease or decline, we may be unable to replace these sales with sales to either existing or new customers in a timely manner, or at all. A cessation or reduction of sales to one or more of these customers could cause a significant decline in our overall sales and profitability.

Our lack of long-term ethanol orders and commitments by our customers could lead to a rapid decline in our sales and profitability.

We cannot rely on long-term ethanol orders or commitments by our customers for protection from the negative financial effects of a decline in the demand for ethanol or a decline in the demand for our marketing services. The limited certainty of ethanol orders can make it difficult for us to forecast our sales and allocate our resources in a manner consistent with our actual sales. Moreover, our expense levels are based in part on our expectations of future sales and, if our expectations regarding future sales are inaccurate, we may be unable to reduce costs in a timely manner to adjust for sales shortfalls. Furthermore, because we depend on a small number of customers for a significant portion of our sales, the magnitude of the ramifications of these risks is greater than if our sales were less concentrated. As a result of our lack of long-term ethanol orders and commitments, we may experience a rapid decline in our sales and profitability.

Risks Related to Ownership of our Common Stock

We have received a delisting notice from The NASDAQ Stock Market. Our common stock may be involuntarily delisted from trading on The NASDAQ Capital Market if we fail to regain compliance with the minimum closing bid price requirement of $1.00 per share. A delisting of our common stock is likely to reduce the liquidity of our common stock and may inhibit or preclude our ability to raise additional financing and may also materially and adversely impact our credit terms with our vendors.

The quantitative listing standards of The NASDAQ Stock Market, or NASDAQ, require, among other things, that listed companies maintain a minimum closing bid price of $1.00 per share. We failed to satisfy this threshold for 30 consecutive trading days and on June 30, 2010, we received a letter from NASDAQ indicating that the bid price of our common stock for the last 30 consecutive trading days had closed below the minimum $1.00 per share required for continued listing under NASDAQ Listing Rule 5550(a)(2). We were provided an initial period of 180 calendar days, or until December 27, 2010, during which to regain compliance. We failed to regain compliance by December 27, 2010 but, due to our transition from The NASDAQ Global Market to The NASDAQ Capital Market, we were provided a final additional period of 180 calendar days, or until June 27, 2011, during which to regain compliance. The letter states that the NASDAQ staff will provide written notification that we have achieved compliance if at any time before June 27, 2011, the bid price of our common stock closes at $1.00 per share or more for a minimum of 10 consecutive business days unless the NASDAQ staff exercises its discretion to extend this 10 day period. If we do not regain compliance by June 27, 2011, the NASDAQ staff will provide written notice that our common stock is subject to delisting. Given the increased market volatility arising in part from economic turmoil resulting from the ongoing credit crisis, the challenging environment in the biofuels industry and our lack of liquidity, we may be unable to regain compliance with the closing bid price requirement by June 27, 2011. A delisting of our common stock is likely to reduce the liquidity of our common stock and may inhibit or preclude our ability to raise additional financing and may also materially and adversely impact our credit terms with our vendors.

The conversion into shares of common stock of convertible securities, including the Convertible Notes and our Series B Cumulative Convertible Preferred Stock, and the exercise of outstanding options and warrants to purchase our common stock could substantially dilute your investment, impede our ability to obtain additional financing, and cause us to incur additional expenses.

The conversion into shares of common stock of our Convertible Notes and Series B Cumulative Convertible Preferred Stock, or Series B Preferred Stock, warrants to purchase our common stock, and outstanding options to acquire our common stock issued to employees, directors and others, could result in substantial dilution in the interests of our other stockholders. In addition, the terms on which we may obtain additional financing may be adversely affected by the existence and potentially dilutive impact of the Convertible Notes, Series B Preferred Stock, warrants and options. Moreover, holders of the Convertible Notes, Series B Preferred Stock, and certain warrants have registration rights with respect to the common stock underlying those securities, the registration of which will likely cause us to incur substantial expenses.

The voting power and value of your investment could decline if our Convertible Notes are converted and our Warrants are exercised at a reduced price due to our issuance of lower-priced shares or market declines which trigger rights of the holders of our Convertible Notes to receive additional shares of our common stock.

We have issued a significant amount of Convertible Notes and Warrants, the conversion or exercise of which could have a substantial negative impact on the price of our common stock and could result in a dramatic decrease in the value of your investment. The initial conversion price of our Convertible Notes is subject to market-price protection that may cause the conversion price of the Convertible Notes to be reduced in the event of a decline in the market price of our common stock. In addition, the conversion price of our Convertible Notes and the exercise price of the Warrants will be subject to downward anti-dilution adjustments in most cases, from time to time, if we issue securities at a purchase, exercise or conversion price that is less than the then-applicable conversion price of our outstanding Convertible Notes or exercise price of the Warrants. Consequently, the voting power and value of your investment in each of these events would decline if the Convertible Notes or the Warrants are converted or exercised for shares of our common stock at lower prices as a result of the declining market-price or sales of our securities are made below the conversion price of the Convertible Notes and/or the exercise price of the Warrants.

The market-price protection feature of our Convertible Notes could also allow the Convertible Notes to become convertible into a greatly increased number of additional shares of our common stock, particularly if a holder of the Convertible Notes sequentially converts portions of the Note into shares of our common stock at alternate conversion prices and resells those shares into the market. If a holder of the Convertible Notes sequentially converts portions of the Convertible Notes into shares of our common stock or if we issue shares of common stock in lieu of cash payments of principal and interest on the Convertible Notes, each at alternate conversion prices, and the holder of the Convertible Notes resells those shares into the market, then the market price of our common stock could decline due to the additional shares available in the market, particularly in the event of any thin trading volume of our common stock. Consequently, if a holder of the Convertible Notes repeatedly converts portions of the Convertible Notes or we repeatedly issue shares of common stock in lieu of cash payments of principal and interest on the Convertible Notes at alternate conversion prices and then the holder resells those underlying shares into the market, a continuous downward spiral of the market price of our common stock could occur that would benefit a holder of our Convertible Notes at the expense of other existing or potential holders of our common stock, potentially creating a divergence of interests between a holder of our Convertible Notes and investors who purchase the shares of common stock resold by a holder of the Convertible Notes following conversion of the Convertible Notes.

The market price of our common stock and the value of your investment could substantially decline if our Convertible Notes or Series B Preferred Stock are converted into shares of our common stock, if we issue shares of our common stock in payment of principal and interest on our Convertible Notes and if our options and warrants are exercised for shares of our common stock and all of these shares of common stock are resold into the market, or if a perception exists that a substantial number of shares will be issued upon conversion of our Convertible Notes or Series B Preferred Stock, upon the payment of principal and interest on the Convertible Notes or upon exercise of our warrants or options and then resold into the market.

If the conversion prices at which the principal balances of the Convertible Notes or Series B Preferred Stock are converted, the issuance prices at which shares of common stock in payment of principal and interest on the Convertible Notes are issued, and the exercise prices at which our warrants and options are exercised are lower than the price at which you made your investment, immediate dilution of the value of your investment will occur. In addition, sales of a substantial number of shares of common stock issued upon conversion of the Convertible Notes or Series B Preferred Stock, in lieu of cash payments of principal and interest on the Convertible Notes and upon exercise of our warrants and options, or even the perception that these sales could occur, could adversely affect the market price of our common stock, which would mean that the Convertible Notes would be convertible into an increased number of shares of our common stock in cases where, as described elsewhere in these Risk Factors, the conversion price is based upon a discount from the market price of our common stock. You could, therefore, experience a substantial decline in the value of your investment as a result of both the actual and potential conversion of our outstanding Convertible Notes or Series B Preferred Stock, issuance of shares of common stock in lieu of cash payments of principal and interest on the Convertible Notes and exercise of our outstanding warrants or options.

The issuance of shares of common stock upon the conversion of the Convertible Notes or Series B Preferred Stock, upon the payment of principal and interest on the Convertible Notes and upon the exercise of outstanding options and warrants could result in a change of control of Pacific Ethanol.

As of March 31, 2011, we had outstanding options, warrants, Convertible Notes (including shares issuable as interest in lieu of cash payments calculated at an interest rate of 8% per annum, compounded monthly, from the closing date of the issuance of the Initial Convertible Notes through the maturity date of the Convertible Notes) and Series B Preferred Stock that were exercisable for or convertible into approximately 85,389,291 shares of common stock based upon an assumed conversion price of $0.57 for the Convertible Notes and existing exercise prices for the warrants and options. In addition, as discussed elsewhere in these Risk Factors, the number of shares exercisable under outstanding warrants and convertible under outstanding Convertible Notes and Series B Preferred Stock may be subject to increase in the event of our future issuance of securities or a decline in the market price of our common stock. A change of control of Pacific Ethanol could occur if a significant number of shares are issued to the holders of our outstanding options, warrants, Convertible Notes or Series B Preferred Stock. If a change of control occurs, then the stockholders who historically have controlled Pacific Ethanol would no longer have the ability to exert significant control over matters that could include the election of our directors, changes in the size and composition of our board of directors, and mergers and other business combinations involving Pacific Ethanol. Instead, one or more other stockholders could gain the ability to exert this type of control and may also, through control of our board of directors and voting power, be able to control a number of decisions, including decisions regarding the qualification and appointment of officers, dividend policy, access to capital (including borrowing from third-party lenders and the issuance of additional equity securities), and the acquisition or disposition of assets.

As a result of our issuance of shares of Series B Preferred Stock, our common stockholders may experience numerous negative effects and most of the rights of our common stockholders will be subordinate to the rights of the holders of our Series B Preferred Stock.

As a result of our issuance of shares of Series B Preferred Stock, our common stockholders may experience numerous negative effects, including dilution from any dividends paid in preferred stock and antidilution adjustments. In addition, rights in favor of the holders of our Series B Preferred Stock include seniority in liquidation and dividend preferences; substantial voting rights; and numerous protective provisions. Also, our outstanding Series B Preferred Stock could have the effect of delaying, deferring and discouraging another party from acquiring control of Pacific Ethanol.

Our stock price is highly volatile, which could result in substantial losses for investors purchasing shares of our common stock and in litigation against us.

The market price of our common stock has fluctuated significantly in the past and may continue to fluctuate significantly in the future. The market price of our common stock may continue to fluctuate in response to one or more of the following factors, many of which are beyond our control:

- our ability to maintain contracts that are critical to our operations, including the asset management agreement with the Plant Owners that provide us with the ability to operate the Pacific Ethanol Plants;
- our ability to obtain and maintain normal terms with vendors and service providers;
- fluctuations in the market price of ethanol and its co-products;

- the volume and timing of the receipt of orders for ethanol from major customers;
- competitive pricing pressures;
- our ability to produce, sell and deliver ethanol on a cost-effective and timely basis;
- the introduction and announcement of one or more new alternatives to ethanol by our competitors;
- changes in market valuations of similar companies;
- stock market price and volume fluctuations generally;
- the relative small public float of our common stock;
- regulatory developments or increased enforcement;
- fluctuations in our quarterly or annual operating results;
- additions or departures of key personnel;
- our inability to obtain financing; and
- future sales of our common stock or other securities.

Furthermore, we believe that the economic conditions in California and other Western states, as well as the United States as a whole, could have a negative impact on our results of operations. Demand for ethanol could also be adversely affected by a slow-down in overall demand for oxygenate and gasoline additive products. The levels of our ethanol production and purchases for resale will be based upon forecasted demand. Accordingly, any inaccuracy in forecasting anticipated revenues and expenses could adversely affect our business. The failure to receive anticipated orders or to complete delivery in any quarterly period could adversely affect our results of operations for that period. Quarterly results are not necessarily indicative of future performance for any particular period, and we may not experience revenue growth or profitability on a quarterly or an annual basis.

The price at which you purchase shares of our common stock may not be indicative of the price that will prevail in the trading market. You may be unable to sell your shares of common stock at or above your purchase price, which may result in substantial losses to you and which may include the complete loss of your investment. In the past, securities class action litigation has often been brought against a company following periods of high stock price volatility. We may be the target of similar litigation in the future. Securities litigation could result in substantial costs and divert management's attention and our resources away from our business.

Any of the risks described above could have a material adverse effect on our sales and profitability and the price of our common stock.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our corporate headquarters, located in Sacramento, California, consists of a 10,000 square foot office under a lease expiring in 2013. The location of the Pacific Ethanol Plants are in Madera, California, at which a 137 acre facility is located; Boardman, Oregon, at which a 25 acre facility is located; Burley, Idaho, at which a 160 acre facility is located; and Stockton, California, at which a 30 acre facility is located. The properties in Madera, California and Burley, Idaho are owned by the Plant Owners. The properties in Boardman, Oregon and Stockton, California are leased by the Plant Owners under leases expiring in 2026 and 2022, respectively. See "Business—Production Facilities."

Item 3. Legal Proceedings.

We are subject to legal proceedings, claims and litigation arising in the ordinary course of business. While the amounts claimed may be substantial, the ultimate liability cannot presently be determined because of considerable uncertainties that exist. Therefore, it is possible that the outcome of those legal proceedings, claims and litigation could adversely affect our quarterly or annual operating results or cash flows when resolved in a future period. However, based on facts currently available, management believes such matters will not materially and adversely affect our financial position, results of operations or cash flows.

Delta-T Corporation

On August 18, 2008, Delta-T Corporation filed suit in the United States District Court for the Eastern District of Virginia, or the First Virginia Federal Court case, naming Pacific Ethanol, Inc. as a defendant, along with its former subsidiaries Pacific Ethanol Stockton, LLC, Pacific Ethanol Imperial, LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Magic Valley, LLC and Pacific Ethanol Madera, LLC. The suit alleged breaches of the parties' Engineering, Procurement and Technology License Agreements, breaches of a subsequent term sheet and letter agreement and breaches of indemnity obligations. The complaint sought specified contract damages of approximately $6.5 million, along with other unspecified damages. All of the defendants moved to dismiss the First Virginia Federal Court case for lack of personal jurisdiction and on the ground that all disputes between the parties must be resolved through binding arbitration, and, in the alternative, moved to stay the First Virginia Federal Court case pending arbitration. In January 2009, these motions were granted by the Court, compelling the case to arbitration with the American Arbitration Association, or AAA. By letter dated June 10, 2009, the AAA notified the parties to the arbitration that the matter was automatically stayed as a result of the Chapter 11 Filings.

On March 18, 2009, Delta-T Corporation filed a cross-complaint against Pacific Ethanol, Inc. and Pacific Ethanol Imperial, LLC in the Superior Court of the State of California in and for the County of Imperial. The cross-complaint arose out of a suit by OneSource Distributors, LLC against Delta-T Corporation. On March 31, 2009, Delta-T Corporation and Bateman Litwin N.V, a foreign corporation, filed a third-party complaint in the United States District Court for the District of Minnesota naming Pacific Ethanol, Inc. and Pacific Ethanol Imperial, LLC as defendants. The third-party complaint arose out of a suit by Campbell-Sevey, Inc. against Delta-T Corporation. On April 6, 2009, Delta-T Corporation filed a cross-complaint against Pacific Ethanol, Inc. and Pacific Ethanol Imperial, LLC in the Superior Court of the State of California in and for the County of Imperial. The cross-complaint arose out of a suit by GEA Westfalia Separator, Inc. against Delta-T Corporation. Each of these actions allegedly related to the aforementioned Engineering, Procurement and Technology License Agreements and Delta-T Corporation's performance of services thereunder. The third-party suit and the cross-complaints asserted many of the factual allegations in the First Virginia Federal Court case and sought unspecified damages.

On June 19, 2009, Delta-T Corporation filed suit in the United States District Court for the Eastern District of Virginia, or the Second Virginia Federal Court case, naming Pacific Ethanol, Inc. as the sole defendant. The suit alleged breaches of the parties' Engineering, Procurement and Technology License Agreements, breaches of a subsequent term sheet and letter agreement, and breaches of indemnity obligations. The complaint sought specified contract damages of approximately $6.5 million, along with other unspecified damages.

In connection with the Chapter 11 Filings, the Plant Owners moved the Bankruptcy Court to enter a preliminary injunction in favor of the Plant Owners and Pacific Ethanol, Inc. staying and enjoining all of the aforementioned litigation and arbitration proceedings commenced by Delta-T Corporation. On August 6, 2009, the Bankruptcy Court ordered that the litigation and arbitration proceedings commenced by Delta-T Corporation be stayed and enjoined until September 21, 2009 or further order of the court, and that the Plant Owners, Pacific Ethanol, Inc. and Delta-T Corporation complete mediation by September 20, 2009 for purposes of settling all disputes between the parties. Following mediation, the parties reached an agreement under which a stipulated order was entered in the Bankruptcy Court on September 21, 2009, providing for a complete mutual release and settlement of any and all claims between Delta-T Corporation and the Plant Owners, a complete reservation of rights as between Pacific Ethanol, Inc. and Delta-T Corporation, and a stay of all proceedings by Delta-T Corporation against Pacific Ethanol, Inc. until December 31, 2009.

On March 1, 2010, Delta-T Corporation resumed active litigation of the Second Virginia Federal Court case by filing a motion for entry of a default judgment. Also on March 1, 2010, Pacific Ethanol, Inc. filed a motion for extension of time for its first appearance in the Second Virginia Federal Court case and also filed a motion to dismiss Delta-T Corporation's complaint based on the mandatory arbitration clause in the parties' contracts, and alternatively to stay proceedings during the pendency of arbitration. These motions were argued on March 31, 2010. The Court ruled on the motions in May 2010, denying Delta-T Corporation's motion for entry of a default judgment, and compelling the case to arbitration with the AAA.

On May 25, 2010, Delta-T Corporation filed a Voluntary Petition in the Bankruptcy Court for the Eastern District of Virginia under Chapter 7 of the Bankruptcy Code. We believe that Delta-T Corporation has liquidated its assets and abandoned its claims against us.

Barry Spiegel – State Court Action

On December 22, 2005, Barry J. Spiegel, a former shareholder and director of Accessity, filed a complaint in the Circuit Court of the 17th Judicial District in and for Broward County, Florida (Case No. 05018512), or the State Court Action, against Barry Siegel, Philip Kart, Kenneth Friedman and Bruce Udell, or collectively, the Individual Defendants. Messrs. Udell and Friedman are former directors of Accessity and Pacific Ethanol. Mr. Kart is a former executive officer of Accessity and Pacific Ethanol. Mr. Siegel is a former director and former executive officer of Accessity and Pacific Ethanol.

The State Court Action relates to the Share Exchange Transaction and purports to state the following five counts against the Individual Defendants: (i) breach of fiduciary duty, (ii) violation of the Florida Deceptive and Unfair Trade Practices Act, (iii) conspiracy to defraud, (iv) fraud, and (v) violation of Florida's Securities and Investor Protection Act. Mr. Spiegel based his claims on allegations that the actions of the Individual Defendants in approving the Share Exchange Transaction caused the value of his Accessity common stock to diminish and is seeking approximately $22.0 million in damages. On March 8, 2006, the Individual Defendants filed a motion to dismiss the State Court Action. Mr. Spiegel filed his response in opposition on May 30, 2006. The court granted the motion to dismiss by Order dated December 1, 2006, on the grounds that, among other things, Mr. Spiegel failed to bring his claims as a derivative action.

On February 9, 2007, Mr. Spiegel filed an amended complaint which purports to state the following five counts: (i) breach of fiduciary duty, (ii) fraudulent inducement, (iii) violation of Florida's Securities and Investor Protection Act, (iv) fraudulent concealment, and (v) breach of fiduciary duty of disclosure. The amended complaint included Pacific Ethanol as a defendant. On March 30, 2007, Pacific Ethanol filed a motion to dismiss the amended complaint. Before the court could decide that motion, on June 4, 2007, Mr. Spiegel amended his complaint, which purports to state two counts: (a) breach of fiduciary duty, and (b) fraudulent inducement. The first count is alleged against the Individual Defendants and the second count is alleged against the Individual Defendants and Pacific Ethanol. The amended complaint was, however, voluntarily dismissed on August 27, 2007, by Mr. Spiegel as to Pacific Ethanol.

Mr. Spiegel sought and obtained leave to file another amended complaint on June 25, 2009, which renewed his case against Pacific Ethanol, and named three additional individual defendants, and asserted the following three counts: (x) breach of fiduciary duty, (y) fraudulent inducement, and (z) aiding and abetting breach of fiduciary duty. The first two counts are alleged solely against the Individual Defendants. With respect to the third count, Mr. Spiegel has named Pacific Ethanol California, Inc. (formerly known as Pacific Ethanol, Inc.), as well as William L. Jones, Neil M. Koehler and Ryan W. Turner. Messrs. Jones and Turner are directors of Pacific Ethanol. Mr. Turner is a former officer of Pacific Ethanol. Mr. Koehler is a director and officer of Pacific Ethanol. Pacific Ethanol and the Individual Defendants filed a motion to dismiss the count against them, and the court granted the motion. Plaintiff then filed another amended complaint, and Defendants once again moved to dismiss. The motion was heard on February 17, 2010, and the court, on March 22, 2010, denied the motion requiring Pacific Ethanol and Messrs. Jones, Koehler and Turner to answer the complaint and respond to discovery requests.

Barry Spiegel – Federal Court Action

On December 28, 2006, Barry J. Spiegel, filed a complaint in the United States District Court, Southern District of Florida (Case No. 06-61848), or the Federal Court Action, against the Individual Defendants and Pacific Ethanol. The Federal Court Action relates to the Share Exchange Transaction and purports to state the following three counts: (i) violations of Section 14(a) of the Securities Exchange Act of 1934, as amended, or Exchange Act, and SEC Rule 14a-9 promulgated thereunder, (ii) violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and (iii) violation of Section 20(A) of the Exchange Act. The first two counts are alleged against the Individual Defendants and Pacific Ethanol and the third count is alleged solely against the Individual Defendants. Mr. Spiegel bases his claims on, among other things, allegations that the actions of the Individual Defendants and Pacific Ethanol in connection with the Share Exchange Transaction resulted in a share exchange ratio that was unfair and resulted in the preparation of a proxy statement seeking shareholder approval of the Share Exchange Transaction that contained material misrepresentations and omissions. Mr. Spiegel is seeking in excess of $15.0 million in damages.

Mr. Spiegel amended the Federal Court Action on March 5, 2007, and Pacific Ethanol and the Individual Defendants filed a Motion to Dismiss the amended pleading on April 23, 2007. Plaintiff Spiegel sought to stay his own federal case, but the Motion was denied on July 17, 2007. The court required Mr. Spiegel to respond to our Motion to Dismiss. On January 15, 2008, the court rendered an Order dismissing the claims under Section 14(a) of the Exchange Act on the basis that they were time barred and that more facts were needed for the claims under Section 10(b) of the Exchange Act. The court, however, stayed the entire case pending resolution of the State Court Action.

Item 4. (Removed and Reserved).

Not applicable.

PART II

Item 5. Market For Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

Market Information

Our common stock has traded on The NASDAQ Capital Market under the symbol "PEIX" since May 3, 2010. Between October 10, 2005 and May 3, 2010, our common stock traded on The NASDAQ Global Market (formerly, The NASDAQ National Market). The table below shows, for each fiscal quarter indicated, the high and low sales prices for shares of our common stock. This information has been obtained from NASDAQ. The prices shown reflect inter-dealer prices, without retail mark-up, mark-down or commission, and may not necessarily represent actual transactions.

	Price Range	
	High	**Low**
Year Ended December 31, 2010:		
First Quarter (January 1 – March 31)	$ 2.75	$ 0.71
Second Quarter (April 1 – June 30)	$ 1.60	$ 0.45
Third Quarter (July 1 – September 30)	$ 1.25	$ 0.37
Fourth Quarter (October 1 – December 31)	$ 1.14	$ 0.58
Year Ended December 31, 2009:		
First Quarter	$ 0.68	$ 0.20
Second Quarter	$ 0.84	$ 0.28
Third Quarter	$ 0.67	$ 0.30
Fourth Quarter	$ 1.06	$ 0.35

Security Holders

As of March 31, 2011, we had 108,430,832 shares of common stock outstanding and held of record by approximately 500 stockholders. These holders of record include depositories that hold shares of stock for brokerage firms which, in turn, hold shares of stock for numerous beneficial owners. On March 31, 2011, the closing sale price of our common stock on The NASDAQ Capital Market was $0.63 per share.

Dividend Policy

We have never paid cash dividends on our common stock and do not intend to pay cash dividends on our common stock in the foreseeable future. We anticipate that we will retain any earnings for use in the continued development of our business.

Our current and future debt financing arrangements may limit or prevent cash distributions from our subsidiaries to us, depending upon the achievement of certain financial and other operating conditions and our ability to properly service our debt, thereby limiting or preventing us from paying cash dividends. In addition, the holders of our outstanding Series B Preferred Stock are entitled to dividends of 7% per annum, payable quarterly, none of which have been paid for the years ended December 31, 2010 and 2009 or thereafter through the filing of this report. Accumulated and unpaid dividends in respect of our preferred stock must be paid prior to the payment of any dividends to our common stockholders.

Recent Sales of Unregistered Securities

None.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

We granted to certain employees and directors shares of restricted stock under our 2006 Stock Incentive Plan pursuant to Restricted Stock Agreements dated and effective as of their respective grant dates by and between us and those employees and directors.

We were obligated to withhold minimum withholding tax amounts with respect to vested shares of restricted stock and upon future vesting of shares of restricted stock granted to our employees. Each employee was entitled to pay the minimum withholding tax amounts to us in cash or to elect to have us withhold a vested amount of shares of restricted stock having a value equivalent to our minimum withholding tax requirements, thereby reducing the number of shares of vested restricted stock that the employee ultimately receives. If an employee failed to timely make such election, we automatically withheld the necessary shares of vested restricted stock.

In October 2010, in connection with satisfying our withholding requirements, we withheld an aggregate of 66,935 shares of our common stock and remitted a cash payment to cover the minimum withholding tax amounts, thereby effectively repurchasing from the employees the 66,935 shares of common stock at a deemed purchase price equal to $0.95 per share for an aggregate purchase price of $64,258.

Item 6. Selected Financial Data.

Not applicable.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion and analysis should be read in conjunction with our consolidated financial statements and notes to consolidated financial statements included elsewhere in this report. This report and our consolidated financial statements and notes to consolidated financial statements contain forward-looking statements, which generally include the plans and objectives of management for future operations, including plans and objectives relating to our future economic performance and our current beliefs regarding revenues we might generate and profits we might earn if we are successful in implementing our business and growth strategies. The forward-looking statements and associated risks may include, relate to or be qualified by other important factors, including:

- fluctuations in the market price of ethanol and its co-products;
- the projected growth or contraction in the ethanol and co-product markets in which we operate;
- our strategies for expanding, maintaining or contracting our presence in these markets;
- our ability to successfully manage and operate third party ethanol production facilities;
- anticipated trends in our financial condition and results of operations; and
- our ability to distinguish ourselves from our current and future competitors.

You are cautioned not to place undue reliance on any forward-looking statements, which speak only as of the date of this report, or in the case of a document incorporated by reference, as of the date of that document. We do not undertake to update, revise or correct any forward-looking statements, except as required by law.

Any of the factors described immediately above or in the "Risk Factors" section above could cause our financial results, including our net income or loss or growth in net income or loss to differ materially from prior results, which in turn could, among other things, cause the price of our common stock to fluctuate substantially.

Overview

We are the leading marketer and producer of low carbon renewable fuels in the Western United States.

Since our inception in 2005, we have conducted ethanol marketing operations through our subsidiary, Kinergy Marketing, LLC, or Kinergy, through which we market and sell ethanol produced by third parties. In 2006, we began constructing the first of our four then wholly-owned ethanol production facilities, or Pacific Ethanol Plants, and were continuously engaged in plant construction until the fourth facility was completed in 2008. We funded, and until recently directly operated, the Pacific Ethanol Plants through a subsidiary holding company and four other indirect subsidiaries, or Plant Owners.

In late 2008 and early 2009, we idled production at three of the Pacific Ethanol Plants due to adverse market conditions and lack of adequate working capital. Adverse market conditions and our financial constraints continued, resulting in an inability to meet our debt service requirements, and in May 2009, the Plant Owners each filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code, or Bankruptcy Code, in the United States Bankruptcy Court for the District of Delaware, or Bankruptcy Court.

On March 26, 2010, the Plant Owners filed a joint plan of reorganization with the Bankruptcy Court, which was structured in cooperation with a number of the Plant Owners' secured lenders. On June 29, 2010, or the Effective Date, the Plant Owners declared effective their amended joint plan of reorganization, or the Plan, and emerged from bankruptcy. Under the Plan, on the Effective Date, all of the ownership interests in the Plant Owners were transferred to a newly-formed holding company, New PE Holdco, LLC, or New PE Holdco, wholly-owned as of that date by some of the prepetition lenders and new lenders of the Plant Owners. As a result, the Pacific Ethanol Plants are now wholly-owned by New PE Holdco.

On October 6, 2010, we raised $35.0 million through the issuance of $35.0 million in principal amount of senior convertible notes, or Initial Convertible Notes, and warrants to purchase an aggregate of 20,588,235 shares of our common stock, or Initial Warrants. See "—Liquidity and Capital Resources—Convertible Notes." On that same date we sold our 42% interest in Front Range Energy, LLC, or Front Range, for $18.5 million in cash, paid off our outstanding indebtedness to Lyles United, LLC and Lyles Mechanical Co., or collectively Lyles, in the aggregate amount of approximately $17.0 million and purchased a 20% ownership interest, which represents the single largest interest, in New PE Holdco for an aggregate purchase price of $23.3 million.

On January 7, 2011, we issued $35.0 million in principal amount of senior convertible notes, or Convertible Notes, in exchange for the Initial Convertible Notes and issued warrants to purchase an aggregate of 20,588,235 shares of our common stock, or Warrants, in exchange for the Initial Warrants. See "—Liquidity and Capital Resources—Convertible Notes."

We currently manage the production of ethanol at the Pacific Ethanol Plants under the terms of an asset management agreement with the Plant Owners. We also market ethanol and its co-products, including wet distillers grain, or WDG, produced by the Pacific Ethanol Plants under the terms of separate marketing agreements with the Plant Owners whose facilities are operational. We also market ethanol and its co-products to other third parties, and provide transportation, storage and delivery of ethanol through third-party service providers in the Western United States, primarily in California, Nevada, Arizona, Oregon, Colorado, Idaho and Washington.

We have extensive customer relationships throughout the Western United States and extensive supplier relationships throughout the Western and Midwestern United States. Our customers are integrated oil companies and gasoline marketers who blend ethanol into gasoline. We supply ethanol to our customers either from the Pacific Ethanol Plants located within the regions we serve, or with ethanol procured in bulk from other producers. In some cases, we have marketing agreements with ethanol producers to market all of the output of their facilities. Additionally, we have customers who purchase our co-products for animal feed and other uses.

The Pacific Ethanol Plants produce ethanol and its co-products and are comprised of the four facilities described immediately below, three of which are currently operational. If market conditions continue to improve, we may resume operations at the Madera, California facility, subject to the approval of New PE Holdco.

Facility Name	Facility Location	Estimated Annual Capacity (gallons)	Current Operating Status
Magic Valley	Burley, ID	60,000,000	Operating
Columbia	Boardman, OR	40,000,000	Operating
Stockton	Stockton, CA	60,000,000	Operating
Madera	Madera, CA	40,000,000	Idled

Under the asset management agreement and marketing agreements, we manage the production and operations of the Pacific Ethanol Plants, market their ethanol and WDG and earn fees as follows:

- ethanol marketing fees of approximately 1% of the net sales price;
- corn procurement and handling fees of approximately $2.00 per ton;
- WDG fees of approximately the greater of 5% of the third-party purchase price or $2.00 per ton; and
- asset management fees of $75,000 per month for each operating facility and $40,000 per month for each idled facility.

We intend to maintain our position as the leading marketer and producer of low-carbon renewable fuels in the Western United States, in part by expanding our relationships with customers and third-party ethanol producers to market higher volumes of ethanol and by expanding the market for ethanol by continuing to work with state governments to encourage the adoption of policies and standards that promote ethanol as a fuel additive and transportation fuel. Further, we may seek to provide management services for other third-party ethanol production facilities in the Western United States.

Financial Performance Summary

Our net sales increased by 4%, or $11.7 million, to $328.3 million in 2010 from $316.6 million in 2009. Our net income increased by $382.1 million to $73.9 million in 2010 from a net loss of $308.2 million in 2009.

Factors that contributed to our results of operations for 2010 include:

- *Net sales*. The increase in our net sales in 2010 as compared to 2009 was primarily due to the following combination of factors:
  - *Higher sales volumes*. Total volume of ethanol sold increased by 57% to 271.6 million gallons in 2010 from 172.7 million gallons in 2009. This increase in sales volume is primarily due to an increase in third party gallons sold, partially offset by decreased gallons sold from our ethanol production facilities. In 2010, gallons associated with Front Range were included in third party gallons sold, whereas in 2009, those gallons were included in gallons sold from our ethanol production facilities due to our deconsolidation of Front Range in 2010, as described below. Further, in 2010, two of the four Pacific Ethanol Plants were operating most of the year, whereas in 2009, only one Pacific Ethanol Plant was operating most of the year; and

- *Higher ethanol prices*. Our average sales price of ethanol increased 9% to $1.96 per gallon in 2010 as compared to $1.80 per gallon in 2009.

- *Gross margin.* Our gross margin increased to negative 0.2% for 2010 from negative 7.0% for 2009. The improvement in gross margin was a result of higher ethanol prices and lower depreciation expense in 2010, which were partially offset by an increase in corn costs. Depreciation was $8.0 million for 2010 as compared to $33.3 million for 2009. Our average price of corn increased by 8.8% to $4.33 per bushel in 2010 from $3.98 per bushel in 2009.

- *Selling, general and administrative expenses*. Our selling, general and administrative expenses, or SG&A, decreased by $8.5 million to $13.0 million in 2010 as compared to $21.5 million in 2009 primarily as a result of decreases in professional fees, SG&A associated with Front Range, payroll and benefits, and other corporate expenses, which were partially offset by increases in bad debt expense and noncash compensation expense.

- *Impairments*. We incurred no impairment charges for 2010 as compared to $252.4 million for 2009. In 2009, we recognized $252.4 million in asset impairments primarily related to the Pacific Ethanol Plants. Of the $252.4 million in asset impairments, $2.2 million related to impairment of the assets of our Imperial Valley facility prior to their disposal.

- *Loss on investment in Front Range.* We sold our interest in Front Range in 2010 resulting in a loss of $12.1 million.

- *Loss on extinguishment of debt.* We extinguished certain outstanding debt in 2010 in exchange for shares of our common stock. These transactions resulted in a loss of $2.2 million.

- *Gain from write-off of liabilities*. We had no gain from the write-off of liabilities for 2010 as compared to a gain of $14.2 million in 2009. The gain in 2009 resulted from a write-off of liabilities related to our Imperial Valley facility.

- *Fair value adjustments on convertible notes and warrants*. We issued convertible notes and warrants in 2010 for $35.0 million in cash. These instruments are recorded at fair value, resulting in a charge of $11.7 million in 2010.

- *Interest expense.* Our interest expense decreased by $7.5 million to $6.3 million in 2010 from $13.8 million in 2009. This decrease is primarily due to restructuring and removal of the Plant Owners' prepetition debt as well as certain other indebtedness that was extinguished during 2010.

- *Other income (expense).* Our other income (expense) increased by $2.0 million to $0.3 million in 2010 from other expense of $1.7 million in 2009. This increase is primarily due to a gain of $1.6 million associated with our purchase of a 20% ownership interest in New PE Holdco.

- *Reorganization costs.* Our reorganization costs decreased by $7.4 million to $4.2 million in 2010 from $11.6 million in 2009. This decrease is due to the wind down in 2010 of the Plant Owners' bankruptcy proceedings that began in 2009.

- *Gain from bankruptcy exit.* On June 29, 2010, the Plant Owners exited from bankruptcy, resulting in the removal of $119.4 million in net liabilities from our balance sheet. This amount was recorded as a gain in 2010.

Sales and Margins

Over the past four years, our sales mix has shifted significantly. We have generated sales by marketing ethanol produced by third parties and have also generated sales by producing our own ethanol. Our sales were initially generated solely through our marketing operations. Upon completion of the first of the Pacific Ethanol Plants, our sales included substantial sales generated from producing our own ethanol. We continue to generate sales through our marketing operations and also generate sales as a producer through our 20% ownership interest in New PE Holdco.

Our production facility cost structure also changed throughout the past four years as the Pacific Ethanol Plants were built and commenced operations, then later filed for bankruptcy protection, subsequently emerged from bankruptcy, and are now minority owned indirectly by us through our 20% ownership interest in New PE Holdco.

The shift in our sales mix greatly altered our dependency on certain market conditions from that based primarily on the market price of ethanol to that based significantly on the cost of corn, the principal input commodity for our production of ethanol. Accordingly, our profitability is dependent on the market price of ethanol and the cost of corn.

Average ethanol sales prices increased in 2010 as compared to 2009. The average Chicago Board of Trade, or CBOT, ethanol price increased by 8% to $1.83 in 2010 from $1.70 in 2009. The increase in the prevailing market price of ethanol was primarily due to the increase in crude oil prices in 2010.

Average corn prices also increased in 2010 as compared to 2009. Specifically, the average CBOT corn price increased by 15% in 2010 as compared to 2009. The increase in the prevailing market price of corn was the primary cause of the increase in our average corn price. The average CBOT corn price increased to $4.29 for 2010 from $3.74 for 2009.

We have three principal methods of selling ethanol: as a merchant, as a producer and as an agent. See "—Critical Accounting Policies—Revenue Recognition" below.

When acting as a merchant or as a producer, we generally enter into sales contracts to ship ethanol to a customer's desired location. We support these sales contracts through purchase contracts with several third-party suppliers or through our own production. We manage the necessary logistics to deliver ethanol to our customers either directly from a third-party supplier or from our inventory via truck or rail. Our sales as a merchant or as a producer expose us to price risks resulting from potential fluctuations in the market price of ethanol and corn. Our exposure varies depending on the magnitude of our sales and purchase commitments compared to the magnitude of our existing inventory, as well as the pricing terms—such as market index or fixed pricing—of our contracts. We seek to mitigate our exposure to price risks by implementing appropriate risk management strategies.

When acting as an agent for third-party suppliers, we conduct back-to-back purchases and sales in which we match ethanol purchase and sale contracts of like quantities and delivery periods. When acting in this capacity, we receive a predetermined service fee and have little or no exposure to price risks resulting from potential fluctuations in the market price of ethanol.

We believe that our gross profit margins primarily depend on five key factors:

- the market price of ethanol, which we believe will be impacted by the degree of competition in the ethanol market, the price of gasoline and related petroleum products, and government regulation, including tax incentives;
- the market price of key production input commodities, including corn and natural gas;
- the market price of WDG;
- our ability to anticipate trends in the market price of ethanol, WDG, and key input commodities and implement appropriate risk management and opportunistic strategies; and
- the proportion of our sales of ethanol produced at the Pacific Ethanol Plants to our sales of ethanol produced by unrelated third-parties.

We seek to optimize our gross profit margins by anticipating the factors above and, when resources are available, implementing hedging transactions and taking other actions designed to limit risk and address these factors. For example, we may seek to decrease inventory levels in anticipation of declining ethanol prices and increase inventory levels in anticipation of increasing ethanol prices. We may also seek to alter our proportion or timing, or both, of purchase and sales commitments.

Our limited resources to act upon the anticipated factors described above and/or our inability to anticipate these factors or their relative importance, and adverse movements in the factors themselves, could result in declining or even negative gross profit margins over certain periods of time. Our ability to anticipate these factors or favorable movements in these factors may enable us to generate above-average gross profit margins. However, given the difficulty associated with successfully forecasting any of these factors, we are unable to estimate our future gross profit margins.

Results of Operations

Accounting for the Results of New PE Holdco

Our consolidated financial statements include the financial statements of the Plant Owners for all periods except for the three months ended September 30, 2010. On June 29, 2010, the Plant Owners emerged from bankruptcy, and the ownership of the Plant Owners was transferred to New PE Holdco. Accordingly, for the three months ended September 30, 2010, we did not consolidate the Plant Owners' financial results as we had no ownership interest in the Plant Owners during the period. Also, under the Plan, we removed the Plant Owners' assets of $175.0 million and liabilities of $294.4 million from our balance sheet, resulting in a net gain of $119.4 million for 2010. On October 6, 2010, we purchased a 20% ownership interest in New PE Holdco, which gave us the single largest equity position in New PE Holdco. Based on our ownership interest as well as our asset management and marketing agreements with New PE Holdco, we determined that, beginning on October 6, 2010, we were the primary beneficiary of New PE Holdco, and as such, we resumed consolidating its financial results with our financial results beginning in the fourth quarter of 2010.

Accounting for the Results of Front Range

Effective January 1, 2010, we adopted the new guidance to Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, 810, *Consolidations*, which resulted in us concluding that, under the FASB's guidance, we were no longer the primary beneficiary of Front Range and, effective January 1, 2010, we prospectively adopted the guidance resulting in a deconsolidation of the financial results of Front Range. Upon deconsolidation, on January 1, 2010, we removed assets of $62.6 million and liabilities of $18.6 million from our consolidated balance sheet and recorded a cumulative debit adjustment to retained earnings of $1.8 million. The periods presented in this report prior to the effective date of the deconsolidation continue to include related balances associated with our prior ownership interest in Front Range. Effective January 1, 2010, we began accounting for our investment in Front Range under the equity method, with equity earnings recorded in other income (expense) in the consolidated statements of operations. On October 6, 2010, we sold our ownership interest in Front Range, resulting in a loss of $12.1 million on the sale for 2010, as we reduced the carrying value of our investment in Front Range to its fair value equal to the $18.5 million sale price.

Selected Financial Information

The following selected financial information should be read in conjunction with our consolidated financial statements and notes to our consolidated financial statements included elsewhere in this report, and the other sections of "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in this report.

Certain performance metrics that we believe are important indicators of our results of operations include:

	Years Ended December 31,		
	2010	**2009**	**Percentage Variance**
Production gallons sold (in millions)	69.4	86.4	(19.7%)
Third party gallons sold (in millions)	202.2	86.3	134.3%
Total gallons sold (in millions)	271.6	172.7	57.3%
Average sales price per gallon	$ 1.96	$ 1.80	8.9%
Corn cost per bushel—CBOT equivalent(1)	$ 4.33	$ 3.98	8.8%
Co-product revenues as % of delivered cost of corn(2)	21.3%	24.6%	(13.4%)
Average CBOT ethanol price per gallon (3)	$ 1.83	$ 1.70	7.6%
Average CBOT corn price per bushel (3)	$ 4.29	$ 3.74	14.7%

(1) We exclude transportation—or "basis"—costs in our corn costs to calculate a CBOT equivalent in order to more appropriately compare our corn costs to average CBOT corn prices.

(2) Co-product revenues as % of delivered cost of corn shows our yield based on sales of WDG generated from ethanol we produced.

(3) Prices for 2010 exclude the three months ended September 30, 2010, as the activities of the Pacific Ethanol Plants were not consolidated in our financial results.

Year Ended December 31, 2010 Compared to the Year Ended December 31, 2009

	Years Ended December 31, 2010	Years Ended December 31, 2009	Dollar Variance Favorable (Unfavorable)	Percentage Variance Favorable (Unfavorable)	Results as a Percentage of Net Sales for the Years Ended December 31, 2010	Results as a Percentage of Net Sales for the Years Ended December 31, 2009
	(dollars in thousands)					
Net sales	$ 328,332	$ 316,560	$ 11,772	3.7%	100.0%	100.0%
Cost of goods sold	329,143	338,607	9,464	2.8%	100.2%	107.0%
Gross loss	(811)	(22,047)	21,236	96.3%	(0.2)%	(7.0)%
Selling, general and administrative expenses	12,956	21,458	8,502	39.6%	3.9%	6.8%
Asset impairments	—	252,388	252,388	100.0%	—	79.7%
Loss from operations	(13,767)	(295,893)	282,126	95.3%	(4.2)%	(93.5)%
Loss on investment in Front Range	(12,146)	—	(12,146)	*	(3.7)%	—
Loss on extinguishments of debt	(2,159)	—	(2,159)	*	(0.7)%	—
Gain from write-off of liabilities	—	14,232	(14,232)	(100.0)%	—	4.5%
Fair value adjustments on convertible notes and warrants	(11,736)	—	(11,736)	*	(3.6)%	—
Interest expense	(6,261)	(13,771)	7,510	54.5%	(1.9)%	(4.4)%
Other income (expense), net	297	(1,666)	1,963	117.8%	0.1%	(0.5)%
Loss before reorganization costs, gain from bankruptcy exit, provision for income taxes and noncontrolling interest in variable interest entities	(45,772)	(297,098)	251,326	84.6%	(13.9)%	(93.9)%
Reorganization costs	(4,153)	(11,607)	7,454	64.2%	(1.3)%	(3.7)%
Gain from bankruptcy exit	119,408	—	119,408	*	36.4%	—
Provision for income taxes	—	—	—	—	—	—
Net income (loss)	69,483	(308,705)	378,188	122.5%	21.2%	(97.5)%
Net income attributed to noncontrolling interest in variable interest entities	4,409	552	3,857	698.7%	1.3%	0.2%
Net income (loss) attributed to Pacific Ethanol, Inc.	$ 73,892	$ (308,153)	$ 382,045	124.0%	22.5%	(97.3)%
Preferred stock dividends	(2,847)	(3,202)	355	11.1%	(0.9)%	(1.0)%
Income (loss) available to common stockholders	$ 71,045	$ (311,355)	$ 382,400	122.8%	21.6%	(98.4)%

* Not meaningful.

Net Sales

The increase in our net sales for 2010 as compared to 2009 was primarily due to the increase in third party gallons sold and an increase in our average sales price per gallon, which were partially offset by a decrease in production gallons sold.

Total volume of production gallons sold decreased by 20%, or 17.0 million gallons, to 69.4 million gallons for 2010 as compared to 86.4 million gallons for 2009. The decrease in production gallons sold is primarily due to our deconsolidation of Front Range for all of 2010 and the deconsolidation of the Columbia and Magic Valley facilities for the three months ended September 30, 2010. Third-party gallons sold increased by 134%, or 115.9 million gallons, to 202.2 million gallons for 2010 as compared to 86.3 million gallons for 2009. The increase in third-party gallons sold is primarily due to increased sales under our third-party ethanol marketing arrangements, including gallons sold for Front Range for all of 2010 and gallons sold for the Columbia and Magic Valley facilities for the three months ended September 30, 2010.

Our average sales price per gallon increased 9% to $1.96 for 2010 from an average sales price per gallon of $1.80 for 2009. This increase in average sales price per gallon is also consistent with the average CBOT price per gallon, which increased 8% to $1.83 for 2010 from $1.70 for 2009.

Cost of Goods Sold and Gross Loss

Our gross loss improved to $0.8 million for 2010 from $22.0 million for 2009 primarily due to higher ethanol prices and lower depreciation expense. Our gross margin decreased to negative 0.2% for 2010 as compared to negative 7.0% for 2009.

The improvement in gross margin resulted from higher ethanol prices and lower depreciation expense in 2010, which were partially offset by an increase in corn costs. At the end of 2009, we recognized asset impairment charges, reducing our asset base and therefore reducing our future depreciation expenses. Total depreciation expense decline 76% to $8.0 million for 2010 from $33.3 million for 2009. In addition, in 2009, we included the gross profit of Front Range in our consolidated results, however these results are not included in our 2010 results.

These factors were partially offset by higher corn costs. Corn is the single largest component of the total cost of our ethanol production. Our average price of corn increased by 8.8% to $4.33 per bushel in 2010 from $3.98 per bushel in 2009.

We are eligible to participate in the California Ethanol Producer Incentive Program through the Pacific Ethanol Plants located in California. For the year ended December 31, 2010, we recorded $0.5 million as a reduction to cost of goods sold.

Selling, General and Administrative Expenses

Our SG&A decreased by $8.5 million to $13.0 million for 2010 as compared to $21.5 million for 2009. SG&A also decreased as a percentage of net sales due to relatively flat net sales. The decrease in the amount of SG&A is primarily due to the following factors:

- professional fees decreased by $3.4 million due to cost saving efforts and a reduction of $2.1 million in professional fees associated with fewer debt restructuring efforts;
- SG&A associated with Front Range decreased by $2.6 million as we no longer consolidate Front Range's financial results;
- payroll and benefits decreased by $2.4 million due to a reduction in the total number of employees as we reduced the number of administrative positions in 2009 in response to reduced ethanol production and related support needs;
- other general corporate expenses, including rent, decreased by $0.8 million due to a reduction in office space and other cost saving efforts; and
- SG&A associated with the Pacific Ethanol Plants decreased by $0.3 million as we did not consolidate their financial results with our own for the three months ended September 30, 2010.

These decreases were partially offset by the following factors:

- an increase in bad debt expense of $0.8 million due to a significant recovery of a trade receivable in 2009 that did not recur in 2010; and
- an increase in noncash compensation expense of $0.5 million in 2010 due primarily to an increase in restricted stock grants to our employees and directors.

Asset Impairments

Our asset impairments were $252.4 million in 2009. In accordance with FASB ASC 360, *Property, Plant and Equipment*, we performed an impairment analysis on our long-lived assets, including our ethanol production facilities and assets associated with our suspended plant construction project in the Imperial Valley near Calipatria, California, or the Imperial Project. Based on our probability-weighted cash flows for our long-lived assets, including the then current status of the Plant Owners' restructuring efforts as they prepared to file a plan of reorganization, we determined that these assets must be assessed for impairment. The assessments resulted in a noncash impairment charge of $250.2 million, thereby initially reducing our property and equipment by that amount. Also in accordance with FASB ASC 360, we assessed for impairment our assets associated with our Imperial Project, which resulted in an impairment charge of $2.2 million in 2009.

Loss on Investment in Front Range

On September 27, 2010, we entered into an agreement to sell our entire interest in Front Range for $18.5 million in cash. The carrying value of our interest in Front Range prior to the sale was $30.6 million. As a result, we reduced our investment in Front Range to fair value, resulting in charge of $12.1 million. We closed the sale of our interest in Front Range on October 6, 2010.

Loss on Extinguishments of Debt

We were party to agreements designed to satisfy our then outstanding debt to Lyles. Under these agreements, we issued shares to a third party which acquired outstanding debt owed to Lyles in successive tranches. During 2010, under the terms of these agreements, we issued an aggregate of 24.1 million shares of common stock, resulting in an aggregate loss of $2.2 million.

Gain from Write-Off of Liabilities

We sold the assets associated with the Imperial Project in the fourth quarter of 2009. The resulting cash proceeds and the settlement of the remaining liabilities were deemed out of our control as they had been assigned to a trustee. As a result, we wrote-off the remaining liabilities, resulting in a gain of $14.2 million in 2009.

Fair Value Adjustments on Convertible Notes and Warrants

We issued senior convertible notes and warrants in 2010 for $35.0 million in cash. The senior convertible notes and warrants are recorded at fair value. We recorded a charge of $11.7 million related to the original issuance and subsequent fair value adjustments of these instruments. The following reconciliation summarizes the initial amounts recognized for the issuance of the senior convertible notes and warrants and subsequent amounts that are recorded in the statements of operations as fair value adjustments to senior convertible notes and warrants (in thousands):

	Balance Sheet		**Statements of Operations**
	Convertible Notes	Warrants	Fair Value Gain (Loss)
Issuance of $35.0 million on October 6, 2010	$ 37,474	$ 7,445	$ (9,919)
Write-off of issuance costs	—	—	(2,910)
Adjustments to fair value for the period	634	(1,727)	1,093
Ending balance, December 31, 2010	$ 38,108	$ 5,718	$ 11,736

Interest Expense

Interest expense decreased by $7.5 million to $6.3 million in 2010 from $13.8 million in 2009. The decrease is primarily due to the completion of the Plant Owners' bankruptcy proceedings, resulting in reduced debt on their balance sheet. In addition, other indebtedness owed to Lyles was extinguished during 2010, further reducing interest expense for 2010 as compared to 2009.

Other Income (Expense), Net

Other income (expense) increased by $2.0 million to $0.3 million in 2010 from other expense of $1.7 million in 2009. The increase in other income (expense) is primarily due to a gain of $1.6 million associated with our acquisition of a 20% ownership interest in New PE Holdco, as we paid for our ownership interest at a discount to the fair value of the net assets of New PE Holdco.

Reorganization Costs and Gain from Bankruptcy Exit

In accordance with FASB ASC 852, *Reorganizations*, revenues, expenses, realized gains and losses, and provisions for losses that can be directly associated with the reorganization and restructuring of our business must be reported separately as reorganization items in the statements of operations. We wrote-off a portion of our unamortized deferred financing fees on the debt which was considered to be unlikely to be repaid. During 2009, the Plant Owners settled a prepetition accrued liability with a vendor, resulting in a realized gain. Professional fees directly related to the reorganization include fees associated with advisors to the Plant Owners, unsecured creditors, secured creditors and administrative costs in complying with reporting rules under the Bankruptcy Code.

The Plant Owners' reorganization costs consisted of the following (in thousands):

	December 31,	
	2010	2009
Professional fees	$ 4,026	$ 5,198
Write-off of unamortized deferred financing fees	—	7,545
Settlement of accrued liability	—	(2,008)
DIP financing fees	—	750
Trustee fees	127	122
Total	$ 4,153	$ 11,607

As of the Effective Date, we no longer owned the Plant Owners. As a result, we removed the net liabilities from our consolidated financial statements, resulting in a net gain from bankruptcy exit of $119.4 million.

Net Loss Attributed to Noncontrolling Interest in Variable Interest Entities

Net loss attributed to noncontrolling interest in variable interest entities relate to the consolidated treatment of Front Range in 2009 and New PE Holdco for the three months ended December 31, 2010, both of which are variable interest entities, and represent the noncontrolling interest of others in the earnings of these entities. We consolidated their entire income statements for the applicable periods. However, because we owned less than 100% of each entity, we reduced our net income or increased our net loss for the noncontrolling interest, which represents the remaining ownership interest that we do not own.

Preferred Stock Dividends

Shares of our Series B Cumulative Convertible Preferred Stock, or Series B Preferred Stock, are entitled to quarterly cumulative dividends payable in arrears in an amount equal to 7% per annum of the purchase price per share of the Series B Preferred Stock. We have accrued dividends of $2.8 million and $3.2 million for 2010 and 2009, respectively, resulting in total accrued and unpaid dividends of $6.0 million in respect of our Series B Preferred Stock.

Liquidity and Capital Resources

During 2010, we funded our operations primarily from cash provided by operations, borrowings under our credit facilities and proceeds from the issuance and sale of our Convertible Notes and Warrants. As of December 31, 2010, we had positive working capital of $10.1 million. As of December 31, 2010 and 2009, we had cash and cash equivalents of $8.7 million and $17.5 million, respectively.

Our current available capital resources consist of cash on hand and amounts available for borrowing under Kinergy's credit facility. We expect that our future available capital resources will consist primarily of our remaining cash balances, amounts available for borrowing, if any, under Kinergy's credit facility, cash generated from Kinergy's ethanol marketing business, fees paid under our asset management agreement relating to our operation of the Pacific Ethanol Plants, distributions, if any, in respect of our ownership interest in New PE Holdco, and the remaining proceeds of any future debt and/or equity financings.

On June 30, 2010, we received a letter from The NASDAQ Stock Market, or NASDAQ, indicating that the bid price of our common stock for the last 30 consecutive trading days had closed below the minimum $1.00 per share required for continued listing. We were provided an initial period of 180 calendar days, or until December 27, 2010, during which to regain compliance. We failed to regain compliance by December 27, 2010 but, due to our transition from The NASDAQ Global Market to The NASDAQ Capital Market, we were provided a final additional period of 180 calendar days, or until June 27, 2011, during which to regain compliance. We may be unable to regain compliance with the closing bid price requirement by June 27, 2011. A delisting of our common stock is likely to reduce the liquidity of our common stock and may inhibit or preclude our ability to raise additional financing and may also materially and adversely impact our credit terms with our vendors. See "Risk Factors."

We believe that current and future available capital resources, revenues generated from operations, and other existing sources of liquidity, including our credit facilities, will be adequate to meet our anticipated working capital and capital expenditure requirements for at least the next twelve months. If, however, we are unable to service the principal and/or interest payments under the Convertible Notes through the issuance of shares of our common stock, if our capital requirements or cash flow vary materially from our current projections, if unforeseen circumstances occur, or if we require a significant amount of cash to fund future acquisitions, we may require additional financing. Our failure to raise capital, if needed, could restrict our growth, or hinder our ability to compete.

Quantitative Year-End Liquidity Status

We believe that the following amounts provide insight into our liquidity and capital resources. The following selected financial information should be read in conjunction with our consolidated financial statements and notes to consolidated financial statements included elsewhere in this report, and the other sections of "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained in this report (dollars in thousands):

	As of and for the Year Ended December 31, 2010	As of and for the Year Ended December 31, 2009	Variance
Current assets	$ 57,962	$ 48,776	18.8%
Current liabilities	$ 47,831	$ 96,431	(50.4%)
Property and equipment, net	$ 168,976	$ 243,733	(30.7%)
Notes payable, net of current portion	$ 84,981	$ 12,739	567.1%
Cash used in operating activities	$ (36,921)	$ (6,302)	(485.9%)
Working capital	$ 10,131	$ (47,655)	121.3%
Working capital ratio	1.21	0.51	137.3%

Change in Working Capital and Cash Flows

Working capital increased from a deficit of $47.7 million at December 31, 2009 to positive working capital $10.1 million at December 31, 2010 as a result of an increase in current assets of $9.2 million and a significant decrease in current liabilities of $48.6 million.

Current assets increased primarily due to an increase in accounts receivable and inventories, as two additional Pacific Ethanol Plants were operating at the end of 2010 as compared to 2009. At December 31, 2009, only the Columbia facility was operating, whereas, at December 31, 2010, the Columbia, Magic Valley and Stockton facilities were operating.

Current liabilities decreased significantly primarily due to a significant reduction in current indebtedness which was extinguished during 2010 in connection with the Plant Owners' emergence from bankruptcy, which was partially offset by our issuance of new indebtedness represented by the Convertible Notes.

Cash used in our operating activities of $36.9 million resulted primarily from our net income, net of an $83.3 million reduction for noncash items, a $13.8 million increase in accounts receivable, a $7.5 million increase in inventories and a $2.0 million decrease in accounts payable, which were partially offset by a reduction of $0.1 million in other net assets.

Cash used in our investing activities of $13.4 million resulted primarily from our $19.5 million net purchase of our interest in New PE Holdco, a $10.5 million impact from our deconsolidation of Front Range, a $1.3 million impact from the Plant Owners' exit from bankruptcy and $0.6 million in additions to property and equipment, which were partially offset by the $18.5 million sale of our interest in Front Range.

Cash provided by our financing activities of $41.5 million resulted primarily from $35.0 million in proceeds from the issuance and sale of our Convertible Notes and Warrants, $17.5 million in proceeds from our other borrowings, $5.2 million in proceeds from our debtor-in-possession financing associated with the Plant Owners' bankruptcy, which were partially offset by $13.3 million in principal payments on related party indebtedness and $2.9 million in debt issuance costs.

Convertible Notes

On October 6, 2010, we raised $35.0 million through the issuance and sale of $35.0 million in principal amount of Initial Notes and Initial Warrants to purchase an aggregate of 20,588,235 shares of our common stock. On January 7, 2011, under the terms of exchange agreements with the holders of the Initial Notes and Initial Warrants, we issued $35.0 million in principal amount of Convertible Notes in exchange for the Initial Notes and issued Warrants to purchase an aggregate of 20,588,235 shares of our common stock in exchange for the Initial Warrants.

The transactions contemplated by the exchange agreements were entered into to, among other things, clarify previously ambiguous language in the Initial Notes and Initial Warrants, provide us with additional time to meet our registration obligations and to add additional flexibility to our ability to incur indebtedness subordinated to the Convertible Notes.

The Convertible Notes mature on January 6, 2012, subject to the right of the lenders to extend the date (i) if an event of default under the Convertible Notes has occurred and is continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an event of default under the Convertible Notes, and (ii) for a period of 20 business days after the consummation of specific types of transactions involving a change of control. The Convertible Notes bear interest at the rate of 8% per annum, which is compounded monthly. The interest rate will increase to 15% per annum upon the occurrence of an event of default.

The holders of the Convertible Notes are entitled to interest, amortization payments and other amounts. We are required to pay a late charge of 15% on any amount of principal or other amounts due which are not paid when due.

Interest on the Convertible Notes is payable in arrears on specified installment dates. If a holder elects to convert or redeem all or any portion of a Convertible Note prior to the maturity date, all interest that would have accrued on the amount being converted or redeemed through the maturity date will also be payable. If we elect to redeem all or any portion of a Convertible Note prior to the maturity date, all interest that would have accrued through the maturity date on the amount redeemed will also be payable.

We are obligated to make amortization payments with respect to the principal amount of each Convertible Note on each of the following dates, collectively, the Installment Dates: (i) March 7, 2011; (ii) May 2, 2011; and (iii) the first trading day of each calendar month thereafter. The amortizing portion of the principal of each Convertible Note, or Monthly Amortization Amount, will equal the fraction of each Convertible Note, the numerator of which is equal to the original outstanding principal amount of the Convertible Note and the denominator of which is equal to the number of Installment Dates remaining until the maturity date.

We may elect to pay the Monthly Amortization Amount and applicable interest in cash or shares of our common stock, at our election, subject to the satisfaction of certain conditions.

All amounts due under the Convertible Notes are convertible at any time, in whole or in part, at the option of the holders into shares of our common stock at a specified conversion price, or Conversion Price. The Convertible Notes were initially convertible into shares of our common stock at the initial Conversion Price of $0.85 per share, or Fixed Conversion Price. The Convertible Notes are now convertible into shares of our common stock at a price determined as follows:

- If we have elected to make an amortization payment in shares of common stock and the date of conversion occurs during the 15 calendar day period following (and including) the applicable Installment Date, or Initial Period, the Conversion Price will equal the lesser of (i) the Fixed Conversion Price, and (ii) the average of the volume weighted average prices of our common stock for each of the five lowest trading days during the 20 trading day period immediately prior to the Initial Period.

- If we have elected to make an amortization payment in shares of common stock and the date of conversion occurs during the period beginning on the 16th calendar day after the applicable Installment Date and ending on the day immediately prior to the next Installment Date or the maturity date, the Conversion Price will equal the lesser of (i) the Fixed Conversion Price, and (ii) the closing bid price of our common stock on the trading date immediately before the date of conversion.

In addition, if an event of default has occurred and is continuing, the Conversion Price will be equal to the lesser of (i) the Fixed Conversion Price, and (ii) the closing bid price of our common stock on the trading date immediately before the date of conversion.

The Fixed Conversion Price is subject to "full ratchet" anti-dilution adjustment where if we were to issue or are deemed to have issued specified securities at a price lower than the then applicable Fixed Conversion Price, the Fixed Conversion Price will immediately decline to equal the price at which we issued or are deemed to have issued the securities. In addition, if we sell or issue any securities with "floating" conversion prices based on the market price of our common stock, the holder of a Convertible Note will have the right to substitute that "floating" conversion price for the Fixed Conversion Price upon conversion of all or part of the Convertible Note.

We have agreed to pay "buy-in" damages of the converting holder if we fail to timely deliver common stock upon conversion of the Convertible Notes.

New PE Holdco Term Debt and Working Capital Line of Credit

On the Effective Date, approximately $294.4 million in prepetition and post petition secured indebtedness of the Plant Owners was restructured under a Credit Agreement entered into on June 25, 2010 among the Plant Owners, as borrowers, and West LB, AG, New York Branch, and other lenders. Under the Plan, the Plant Owners' existing prepetition and post petition secured indebtedness of approximately $294.4 million was restructured to consist of approximately $50.0 million in three-year term loans and a new three-year revolving credit facility of up to $35.0 million to fund working capital requirements.

Notes Payable to Related Parties

On March 31, 2009, our Chairman of the Board and our Chief Executive Officer provided funds in the aggregate amount of $2.0 million for general working capital purposes, in exchange for two unsecured promissory notes payable by us. Interest on the unpaid principal amounts accrues at a rate per annum of 8.00%. All principal and accrued and unpaid interest on the promissory notes was due and payable in March 2010. The maturity date of these notes was initially extended to January 5, 2011. On October 29, 2010, we repaid $750,000 of principal on these notes and all accrued and unpaid interest. On November 5, 2010, we further extended the maturity date of these notes to March 31, 2012.

Kinergy Operating Line of Credit

Kinergy maintains a credit facility in the aggregate amount of up to $20.0 million. The credit facility expires on December 31, 2013. Interest accrues under the credit facility at a rate equal to (i) the three-month London Interbank Offered Rate (LIBOR), plus (ii) a specified applicable margin ranging between 3.50% and 4.50%. The credit facility's monthly unused line fee is 0.50% of the amount by which the maximum credit under the facility exceeds the average daily principal balance. Kinergy is also required to pay customary fees and expenses associated with the credit facility and issuances of letters of credit. In addition, Kinergy is responsible for a $3,000 monthly servicing fee. Payments that may be made by Kinergy to Pacific Ethanol as reimbursement for management and other services provided by Pacific Ethanol to Kinergy are limited to $750,000 per fiscal quarter in 2011, $800,000 per fiscal quarter in 2012, and $850,000 per fiscal quarter in 2013. Kinergy is required to meet specified EBITDA and fixed coverage ratio financial covenants under the credit facility and is prohibited from incurring any additional indebtedness (other than specific intercompany indebtedness) or making any capital expenditures in excess of $100,000 absent the lender's prior consent. Kinergy's obligations under the credit facility are secured by a first-priority security interest in all of its assets in favor of the lender. We have guaranteed all of Kinergy's obligations under the credit facility.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of net sales and expenses for each period. The following represents a summary of our critical accounting policies, defined as those policies that we believe are the most important to the portrayal of our financial condition and results of operations and that require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effects of matters that are inherently uncertain.

Revenue Recognition

We recognize revenue when it is realized or realizable and earned. We consider revenue realized or realizable and earned when there is persuasive evidence of an arrangement, delivery has occurred, the sales price is fixed or determinable, and collection is reasonably assured.

We derive revenue primarily from sales of ethanol and related co-products. We recognize revenue when title transfers to our customers, which is generally upon the delivery of these products to a customer's designated location. These deliveries are made in accordance with sales commitments and related sales orders entered into with customers either verbally or in written form. The sales commitments and related sales orders provide quantities, pricing and conditions of sales. In this regard, we engage in three basic types of revenue generating transactions:

- *As a producer*. Sales as a producer consist of sales of our inventory produced at the Pacific Ethanol Plants.

- *As a merchant.* Sales as a merchant consist of sales to customers through purchases from third-party suppliers in which we may or may not obtain physical control of the ethanol or co-products, though ultimately titled to us, in which shipments are directed from our suppliers to our terminals or direct to our customers but for which we accept the risk of loss in the transactions.

- *As an agent.* Sales as an agent consist of sales to customers through purchases from third-party suppliers in which, depending upon the terms of the transactions, title to the product may technically pass to us, but the risks and rewards of inventory ownership remain with third-party suppliers as we receive a predetermined service fee under these transactions and therefore act predominantly in an agency capacity.

Revenue from sales of third-party ethanol and its co-products is recorded net of costs when we are acting as an agent between the customer and supplier and gross when we are a principal to the transaction. Several factors are considered to determine whether we are acting as an agent or principal, most notably whether we are the primary obligor to the customer, whether we have inventory risk and related risk of loss or whether we add meaningful value to the vendor's product or service. Consideration is also given to whether we have latitude in establishing the sales price or have credit risk, or both.

We record revenues based upon the gross amounts billed to our customers in transactions where we act as a producer or a merchant and obtain title to ethanol and its co-products and therefore own the product and any related, unmitigated inventory risk for the ethanol, regardless of whether we actually obtain physical control of the product. When we act in an agency capacity, we record revenues on a net basis, or our predetermined agency fees and any associated freight only, based upon the amount of net revenues retained in excess of amounts paid to suppliers.

Consolidation of Variable Interest Entities

We have determined that Front Range met the definition of a variable interest entity through our prior ownership interest in that entity. Since our initial acquisition of our ownership interest in Front Range through December 31, 2009, we determined that we were the primary beneficiary of Front Range and we were therefore required to treat Front Range as a consolidated subsidiary for financial reporting purposes rather than use equity investment accounting treatment. As a result, we consolidated the financial results of Front Range, including its entire balance sheet with the balance of the noncontrolling interest displayed as a component of equity, and its income statement after intercompany eliminations with an adjustment for the noncontrolling interest as net income (loss) attributed to noncontrolling interest in variable interest entity, through December 31, 2009.

Effective January 1, 2010, we adopted new accounting guidance. Under the new guidance, we concluded that we were no longer the primary beneficiary of Front Range. As a result, effective January 1, 2010, we deconsolidated the financial results of Front Range. Our conclusion that we were no longer the primary beneficiary of Front Range was based upon our determination that we did not have the power to direct most of the activities that most significantly impact Front Range's economic performance. Some of those activities include efficient management and operations of its ethanol production facility, procurement of feedstock, sale of co-products and implementation of risk management strategies.

On October 6, 2010, we acquired a 20% ownership interest in New PE Holdco. We have determined that New PE Holdco is a variable interest entity. We also determined that we are the primary beneficiary of New PE Holdco and therefore we are required to consolidate the results of New PE Holdco in the same manner as we previously accounted for Front Range, as discussed above.

These determinations will be reviewed for appropriateness at each future reporting period.

Convertible Notes and Warrants Carried at Fair Value

We have elected the fair value alternative for our Convertible Notes in order to simply our accounting and reporting. We have also recorded our Warrants issued in connection with our Convertible Notes at fair value. We believe the valuation of the Convertible Notes and Warrants is a critical accounting estimate because valuation estimates obtained from third parties involve inputs other than quoted prices to value the conversion feature. Changes in such estimates, and in particular certain of the inputs to the valuation, can be volatile from period to period and may markedly impact the total mark-to-market on the Convertible Notes and Warrants recorded as fair value adjustments in our consolidated statements of operations.

We recorded fair value adjustments on convertible notes and warrants of $11.7 million for the year ended December 31, 2010.

Impairment of Long-Lived and Intangible Assets

Our long-lived assets have been primarily associated with the Pacific Ethanol Plants, reflecting the original cost of construction, adjusted for any prior impairment.

We evaluate impairment of long-lived assets in accordance with FASB ASC 360. We assess the impairment of long-lived assets, including property and equipment and purchased intangibles subject to amortization, when events or changes in circumstances indicate that the fair value of each asset (or asset group) could be less than the net book value of the asset (or asset group). We assess long-lived assets for impairment by first determining the forecasted, undiscounted cash flows each asset (or asset group) is expected to generate plus the net proceeds expected from the sale of the asset (or asset group). If the amount of proceeds is less than the carrying value of the asset (or asset group), we then determine the fair value of the asset (or asset group). An impairment loss would be recognized when the fair value is less than the related net book value, and an impairment expense would be recorded in the amount of the difference. Forecasts of future cash flows are judgments based on our experience and knowledge of our operations and the industries in which we operate. These forecasts could be significantly affected by future changes in market conditions, the economic environment, including inflation, and the purchasing decisions of our customers.

We review our intangible assets with indefinite lives at least annually or more frequently if impairment indicators arise. In our review, we determine the fair value of these assets using market multiples and discounted cash flow modeling and compare it to the net book value of the acquired assets.

We recognized asset impairment charges associated with the Pacific Ethanol Plants and our Imperial Project in the aggregate amount of $252.4 million in 2009. We did not recognize any asset impairment charges in 2010.

Allowance for Doubtful Accounts

We sell ethanol primarily to gasoline refining and distribution companies and sell WDG to dairy operators and animal feed distributors. We had significant concentrations of credit risk from sales of our ethanol as of December 31, 2010 and 2009, as described in Note 1 to our consolidated financial statements included elsewhere in this report. However, those ethanol customers historically have had good credit ratings and historically we have collected amounts that were billed to those customers. Receivables from customers are generally unsecured. We continuously monitor our customer account balances and actively pursue collections on past due balances.

We maintain an allowance for doubtful accounts for balances that appear to have specific collection issues. Our collection process is based on the age of the invoice and requires attempted contacts with the customer at specified intervals. If after a specified number of days, we have been unsuccessful in our collection efforts, we consider recording a bad debt allowance for the balance in question. We would eventually write-off accounts included in our allowance when we have determined that collection is not likely. The factors considered in reaching this determination are the apparent financial condition of the customer, and our success in contacting and negotiating with the customer.

We recognized a recovery of bad debt expense of $0.2 million and $1.0 million for 2010 and 2009, respectively.

Impact of New Accounting Pronouncements

On June 12, 2009, the FASB amended its guidance to ASC 810, *Consolidations*, surrounding a company's analysis to determine whether any of its variable interest entities constitute controlling financial interests in a variable interest entity. This analysis identifies the primary beneficiary of a variable interest entity as the enterprise that has both of the following characteristics: (i) the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance, and (ii) the obligation to absorb losses of the entity that could potentially be significant to the variable interest entity. Additionally, an enterprise is required to assess whether it has an implicit financial responsibility to ensure that a variable interest entity operates as designed when determining whether it has the power to direct the activities of the variable interest entity that most significantly impact the entity's economic performance. The new guidance also requires ongoing reassessments of whether an enterprise is the primary beneficiary of a variable interest entity. Effective January 1, 2010, we adopted this guidance and concluded that we were no longer the primary beneficiary of Front Range. As a result, effective January 1, 2010, we deconsolidated the financial results of Front Range from our own.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Not applicable.

Item 8. Financial Statements and Supplementary Data.

Reference is made to the financial statements, which begin at page F-1 of this report.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

We conducted an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures. The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as amended ("Exchange Act"), means controls and other procedures of a company that are designed to ensure that information required to be disclosed by the company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures also include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate, to allow timely decisions regarding required disclosure. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded as of December 31, 2010 that our disclosure controls and procedures were effective at a reasonable assurance level.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Our internal control over financial reporting includes those policies and procedures that:

(i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets;

(ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and

(iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material affect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is defined by the Public Company Accounting Oversight Board's Audit Standard No. 5 as being a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis by the company's internal controls.

Management assessed and evaluated the effectiveness of our internal control over financial reporting as of December 31, 2010. Based on the results of management's assessment and evaluation, our Chief Executive Officer and Chief Financial Officer concluded that as of December 31, 2010, our internal control over financial reporting was effective.

In making its assessment of our internal control over financial reporting, management used criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission in its *Internal Control—Integrated Framework.*

Management's report was not subject to attestation by our certified registered public accounting firm pursuant to rules established by the Securities and Exchange Commission that permit us to provide only management's report in this Annual Report on Form 10-K.

Inherent Limitations on the Effectiveness of Controls

Management does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control systems are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in a cost-effective control system, no evaluation of internal control over financial reporting can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been or will be detected.

These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of a simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of controls effectiveness to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

Changes in Internal Control over Financial Reporting

There has been no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Ex change Act) during the most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The information under the captions "Information about our Board of Directors, Board Committees and Related Matters" and "Section 16(a) Beneficial Ownership Reporting Compliance," appearing in the Proxy Statement, is hereby incorporated by reference.

Item 11. Executive Compensation.

The information under the caption "Executive Compensation and Related Information," appearing in the Proxy Statement, is hereby incorporated by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The information under the captions "Security Ownership of Certain Beneficial Owners and Management" and "Equity Compensation Plan Information," appearing in the Proxy Statement, is hereby incorporated by reference.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information under the captions "Certain Relationships and Related Transactions" and "Information about our Board of Directors, Board Committees and Related Matters—Director Independence" appearing in the Proxy Statement, is hereby incorporated by reference.

Item 14. Principal Accounting Fees and Services.

The information under the caption "Audit Matters—Principal Accountant Fees and Services," appearing in the Proxy Statement, is hereby incorporated by reference.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a)(1) Financial Statements

Reference is made to the financial statements listed on and attached following the Index to Consolidated Financial Statements contained on page F-1 of this report.

(a)(2) Financial Statement Schedules

None.

(a)(3) Exhibits

Reference is made to the exhibits listed on the Index to Exhibits.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders
Pacific Ethanol, Inc.

We have audited the accompanying consolidated balance sheets of Pacific Ethanol, Inc. (the "Company") as of December 31, 2010 and 2009, and the related consolidated statements of operations, stockholders' equity, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Pacific Ethanol, Inc. as of December 31, 2010 and 2009, and the results of its operations and its cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

/s/ HEIN & ASSOCIATES LLP

Irvine, California
March 31, 2011

PACIFIC ETHANOL, INC.
CONSOLIDATED BALANCE SHEETS
(in thousands, except shares and par value)

ASSETS	December 31, 2010	December 31, 2009
Current Assets:		
Cash and cash equivalents	$ 8,736	$ 17,545
Accounts receivable, net of allowance for doubtful accounts of $287 and $1,016, respectively	25,855	12,765
Inventories	17,306	12,131
Prepaid inventory	2,715	3,192
Other current assets	3,350	3,143
Total current assets	57,962	48,776
Total property and equipment, net	168,976	243,733
Other Assets:		
Intangible assets, net	5,382	5,156
Other assets	1,763	1,154
Total other assets	7,145	6,310
Total Assets (a)	$ 234,083	$ 298,819

(a) Assets of the consolidated variable interest entities that can only be used to settle obligations of those entities were $183,652 and $61,955 as of December 31, 2010 and 2009, respectively.

The accompanying notes are an integral part of these consolidated financial statements.

PACIFIC ETHANOL, INC.
CONSOLIDATED BALANCE SHEETS (CONTINUED)
(in thousands, except shares and par value)

LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)	December 31, 2010	December 31, 2009
Current Liabilities:		
Accounts payable – trade	$ 6,472	$ 8,182
Accrued liabilities	3,236	7,063
Other liabilities – related parties	—	2,851
Current portion – long-term debt (including $0 and $33,500 due to a related party, respectively, and $38,108 and $0 at fair value, respectively)	38,108	77,364
Derivative instruments	15	971
Total current liabilities	47,831	96,431
Long-term debt, net of current portion	84,981	12,739
Accrued preferred dividends	6,050	3,202
Other liabilities	7,406	1,828
Liabilities subject to compromise	—	242,417
Total Liabilities (b)	146,268	356,617
Commitments and contingencies (Notes 1, 5, 6 and 12)		
Stockholders' Equity (Deficit):		
Preferred stock, $0.001 par value; 10,000,000 shares authorized:		
Series A: 1,684,375 shares authorized; 0 shares issued and outstanding as of December 31, 2010 and 2009	—	—
Series B: 2,109,772 shares authorized; 1,455,924 and 2,346,152 shares issued and outstanding as of December 31, 2010 and 2009, respectively; liquidation preference of $34,440 as of December 31, 2010	1	2
Common stock, $0.001 par value; 300,000,000 shares authorized; 90,427,009 and 57,469,598 shares issued and outstanding as of December 31, 2010 and 2009, respectively	90	57
Additional paid-in capital	504,546	480,948
Accumulated deficit	(511,794)	(581,076)
Total Pacific Ethanol, Inc. Stockholders' Equity (Deficit)	(7,157)	(100,069)
Noncontrolling interest in variable interest entities	94,972	42,271
Total stockholders' equity (deficit)	87,815	(57,798)
Total Liabilities and Stockholders' Equity (Deficit)	$ 234,083	$ 298,819

(b) Liabilities of the variable interest entities for which creditors do not have recourse to the general credit of the Company were $74,939 and $18,613, as of December 31, 2010 and 2009, respectively.

The accompanying notes are an integral part of these consolidated financial statements.

PACIFIC ETHANOL, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Years Ended December 31, 2010	2009
Net sales	$ 328,332	$ 316,560
Cost of goods sold	329,143	338,607
Gross loss	(811)	(22,047)
Selling, general and administrative expenses	12,956	21,458
Asset impairments	—	252,388
Loss from operations	(13,767)	(295,893)
Loss on investment in Front Range	(12,146)	—
Loss on extinguishments of debt	(2,159)	—
Gain from write-off of liabilities	—	14,232
Fair value adjustments on convertible notes and warrants	(11,736)	—
Interest expense, net	(6,261)	(13,771)
Other expense, net	297	(1,666)
Loss before reorganization costs, gain from bankruptcy exit and provision for income taxes	(45,772)	(297,098)
Reorganization costs	(4,153)	(11,607)
Gain from bankruptcy exit	119,408	—
Provision for income taxes	—	—
Net income (loss)	69,483	(308,705)
Net loss attributed to noncontrolling interest in variable interest entities	4,409	552
Net income (loss) attributed to Pacific Ethanol, Inc.	$ 73,892	$ (308,153)
Preferred stock dividends	$ (2,847)	$ (3,202)
Income (loss) available to common stockholders	$ 71,045	$ (311,355)
Income (loss) per share, basic	$ 0.97	$ (5.45)
Income (loss) per share, diluted	$ 0.80	$ (5.45)
Weighted-average shares outstanding, basic	73,600	57,084
Weighted-average shares outstanding, diluted	93,647	57,084

The accompanying notes are an integral part of these consolidated financial statements.

PACIFIC ETHANOL, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
FOR THE YEARS ENDED DECEMBER 31, 2010 and 2009
(in thousands)

	Preferred Stock		Common Stock		Additional Paid-In	Accumulated	Non-controlling Interest in	
	Shares	Amount	Shares	Amount	Capital	Deficit	VIE	Total
Balances, January 1, 2009	2,346	$ 2	57,750	$ 58	$ 479,034	$ (269,721)	$ 42,823	$ 252,196
Stock-based compensation expense – restricted stock to employees and directors, net of cancellations	—	—	(280)	(1)	1,914	—	—	1,913
Preferred stock dividends	—	—	—	—	—	(3,202)	—	(3,202)
Net loss	—	—	—	—	—	(308,153)	(552)	(308,705)
Balances, December 31, 2009	2,346	$ 2	57,470	$ 57	$ 480,948	$ (581,076)	$ 42,271	$ (57,798)
Deconsolidation of Front Range	—	$ —	—	$ —	$ —	$ (1,763)	$ (42,271)	$ (44,034)
Consolidation of New PE Holdco	—	—	—	—	—	—	99,381	99,381
Stock-based compensation expense – restricted stock to employees and directors, net of cancellations	—	—	3,921	4	2,467	—	—	2,471
Conversion of preferred stock to common stock	(890)	(1)	4,949	5	(4)	—	—	—
Shares issued in debt extinguishments	—	—	24,087	24	21,135	—	—	21,159
Preferred stock dividends	—	—	—	—	—	(2,847)	—	(2,847)
Net income (loss)	—	—	—	—	—	73,892	(4,409)	69,483
Balances, December 31, 2010	1,456	$ 1	90,427	$ 90	$ 504,546	$ (511,794)	$ 94,972	$ 87,815

The accompanying notes are an integral part of these consolidated financial statements.

PACIFIC ETHANOL, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the Years Ended December 31,	
	2010	**2009**
Operating Activities:		
Net income (loss)	$ 69,483	$ (308,705)
Adjustments to reconcile net income (loss) to cash used in operating activities:		
Non-cash reorganization costs:		
Gain on bankruptcy exit	(119,408)	—
Write-off of unamortized deferred financing fees	—	7,545
Settlement of accrued liability	—	(2,008)
Loss on investment in Front Range, held for sale	12,146	—
Fair value adjustments on convertible notes and warrants	11,736	—
Loss on extinguishments of debt	2,159	—
Asset impairments	—	252,388
Bargain purchase of New PE Holdco	(1,566)	—
Gain from write-off of liabilities	—	(14,232)
Depreciation and amortization of intangibles	9,110	34,876
Inventory valuation	(490)	873
Gain on derivative instruments	(1,049)	(3,671)
Amortization of deferred financing costs	1,001	1,193
Non-cash compensation	2,471	1,924
Equity earnings on Front Range	928	—
Bad debt recovery	(184)	(955)
Changes in operating assets and liabilities:		
Accounts receivable	(13,789)	12,015
Restricted cash	—	2,315
Inventories	(7,462)	5,404
Prepaid expenses and other assets	(516)	2,434
Prepaid inventory	477	(1,176)
Accounts payable and accrued expenses	(1,968)	3,478
Net cash used in operating activities	$ (36,921)	$ (6,302)
Investing Activities:		
Additions to property and equipment	$ (643)	$ (4,304)
Proceeds from sale of investment in Front Range	18,500	—
Investment in New PE Holdco, net of cash acquired	(19,494)	—
Net cash impact of deconsolidation of Front Range	(10,486)	—
Net cash impact of bankruptcy exit	(1,301)	—
Proceeds from sales of available-for-sale investments	—	7,679
Net cash provided by (used in) investing activities	$ (13,424)	$ 3,375
Financing Activities:		
Proceeds from convertible notes and warrants	$ 35,000	$ —
Payments for debt issuance costs	(2,909)	—
Proceeds from borrowings under DIP financing	5,173	19,827
Proceeds from related party borrowings	—	2,000
Proceeds from other borrowings	17,522	—
Principal payments paid on related party borrowings	(13,250)	—
Principal payments paid on other borrowings	—	(12,821)
Net cash provided by financing activities	$ 41,536	$ 9,006
Net increase (decrease) in cash and cash equivalents	(8,809)	6,079
Cash and cash equivalents at beginning of period	17,545	11,466
Cash and cash equivalents at end of period	$ 8,736	$ 17,545
Supplemental Information:		
Interest paid	$ 9,771	$ 3,349
Non-cash financing and investing activities:		
Preferred stock dividends accrued	$ 2,847	$ 3,202
Debt extinguished with issuance of common stock	$ 19,000	$ —

The accompanying notes are an integral part of these consolidated financial statements.

1. ORGANIZATION, SIGNIFICANT ACCOUNTING POLICIES AND RECENT ACCOUNTING PRONOUNCEMENTS.

Organization and Business – The consolidated financial statements include the accounts of Pacific Ethanol, Inc., a Delaware corporation ("Pacific Ethanol"), and its wholly-owned subsidiaries, including Pacific Ethanol California, Inc., a California corporation ("PEI California"), Kinergy Marketing, LLC, an Oregon limited liability company ("Kinergy") and Pacific Ag. Products, LLC, a California limited liability company ("PAP") for all periods presented, and for the periods specified below, the Plant Owners (as defined below), and Front Range Energy, LLC, a Colorado limited liability company ("Front Range") (collectively, the "Company").

The Company is the leading marketer and producer of low carbon renewable fuels in the Western United States. The Company also sells ethanol co-products, including wet distillers grain ("WDG"), and provides transportation, storage and delivery of ethanol through third-party service providers in the Western United States, primarily in California, Nevada, Arizona, Oregon, Colorado, Idaho and Washington. The Company sells ethanol produced by the Pacific Ethanol Plants (as defined below) and unrelated third parties to gasoline refining and distribution companies and sells its WDG to dairy operators and animal feed distributors.

On May 17, 2009, five indirect wholly-owned subsidiaries of Pacific Ethanol, Inc., namely, Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton, LLC and Pacific Ethanol Magic Valley, LLC (collectively, the "Pacific Ethanol Plants") and Pacific Ethanol Holding Co. LLC (together with the Pacific Ethanol Plants, the "Plant Owners") each filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in an effort to restructure their indebtedness (the "Chapter 11 Filings"). The Plant Owners continued to operate their businesses and manage their properties as debtors and debtors-in-possession during the pendency of the bankruptcy proceedings.

On June 29, 2010 (the "Effective Date"), the Plant Owners declared effective their amended joint plan of reorganization (the "Plan") with the Bankruptcy Court, which was structured in cooperation with certain of the Plant Owners' secured lenders. Under the Plan, on the Effective Date, 100% of the ownership interests in the Plant Owners were transferred to a newly-formed limited liability company, New PE Holdco, LLC ("New PE Holdco") which was wholly-owned by certain prepetition lenders, resulting in each of the Plant Owners becoming wholly-owned subsidiaries of New PE Holdco.

Effective June 29, 2010, under a new asset management agreement, the Company manages the production and operation of the Pacific Ethanol Plants. These four facilities have an aggregate annual production capacity of up to 200 million gallons. As of December 31, 2010, three of the facilities were operating and one of the facilities was idled. If market conditions continue to improve, the Company may resume operations at the Madera, California facility, subject to the approval of New PE Holdco.

On October 6, 2010, the Company purchased a 20% ownership interest in New PE Holdco, a variable interest entity ("VIE"), from a number of New PE Holdco's existing owners. At that time, the Company determined it was the primary beneficiary of New PE Holdco, and as such, has consolidated the results of New PE Holdco since that time. See Note 2 – Variable Interest Entities.

On October 6, 2010, the Company sold its entire 42% ownership interest in Front Range, also a VIE, which owns a plant located in Windsor, Colorado, with an annual production capacity of up to 50 million gallons. Upon the Company's original acquisition of its 42% ownership interest, the Company determined it was the primary beneficiary of Front Range, and as such, consolidated its financial results since the acquisition date through December 31, 2009. On January 1, 2010, the Company determined it was no longer the primary beneficiary of Front Range and since then recorded its investment in Front Range under the equity method of accounting.

Basis of Presentation – The consolidated financial statements and related notes have been prepared in accordance with accounting principles generally accepted in United States ("GAAP") and include the accounts of the Company. All significant intercompany accounts and transactions have been eliminated in consolidation.

Liquidity – The Company believes that current and future available capital resources, revenues generated from operations, and other existing sources of liquidity, including its credit facilities, will be adequate to meet its anticipated working capital and capital expenditure requirements for at least the next twelve months. If, however, the Company is unable to service the principal and/or interest payments under its outstanding senior convertible notes through the issuance of shares of its common stock, if the Company's capital requirements or cash flow vary materially from its current projections, if unforeseen circumstances occur, or if the Company requires a significant amount of cash to fund future acquisitions, the Company may require additional financing. The Company's failure to raise capital, if needed, could restrict its growth, or hinder its ability to compete.

Cash and Cash Equivalents – The Company considers all highly-liquid investments with an original maturity of three months or less to be cash equivalents.

Accounts Receivable and Allowance for Doubtful Accounts – Trade accounts receivable are presented at face value, net of the allowance for doubtful accounts. The Company sells ethanol to gasoline refining and distribution companies and sells WDG to dairy operators and animal feed distributors generally without requiring collateral. Due to a limited number of ethanol customers, the Company had significant concentrations of credit risk from sales of ethanol as of December 31, 2010 and 2009, as described below.

The Company maintains an allowance for doubtful accounts for balances that appear to have specific collection issues. The collection process is based on the age of the invoice and requires attempted contacts with the customer at specified intervals. If, after a specified number of days, the Company has been unsuccessful in its collection efforts, a bad debt allowance is recorded for the balance in question. Delinquent accounts receivable are charged against the allowance for doubtful accounts once uncollectibility has been determined. The factors considered in reaching this determination are the apparent financial condition of the customer and the Company's success in contacting and negotiating with the customer. If the financial condition of the Company's customers were to deteriorate, resulting in an impairment of ability to make payments, additional allowances may be required.

The allowance for doubtful accounts was $287,000 and $1,016,000 as of December 31, 2010 and 2009, respectively. The Company recorded a bad debt recovery of $184,000 and $955,000 for the years ended December 31, 2010 and 2009, respectively. The Company does not have any off-balance sheet credit exposure related to its customers.

Concentrations of Credit Risk – Credit risk represents the accounting loss that would be recognized at the reporting date if counterparties failed completely to perform as contracted. Concentrations of credit risk, whether on- or off-balance sheet, that arise from financial instruments exist for groups of customers or counterparties when they have similar economic characteristics that would cause their ability to meet contractual obligations to be similarly affected by changes in economic or other conditions described below. Financial instruments that subject the Company to credit risk consist of cash balances maintained in excess of federal depository insurance limits and accounts receivable, which have no collateral or security. The Company has not experienced any losses in such accounts and believes that it is not exposed to any significant risk of loss of cash.

The Company sells fuel-grade ethanol to gasoline refining and distribution companies. The Company had sales to customers representing 10% or more of total net sales as follows:

	Years Ended December 31,	
	2010	2009
Customer A	19%	19%
Customer B	5%	13%

As of December 31, 2010, the Company had accounts receivable due from these customers totaling $7,976,000, representing 31% of total accounts receivable. As of December 31, 2009, the Company had accounts receivable due from these customers totaling $2,536,000, representing 20% of total accounts receivable.

The Company purchases fuel-grade ethanol and corn, its largest cost component in producing ethanol, from its suppliers. The Company had purchases from ethanol and corn suppliers representing 10% or more of total purchases by the Company in the purchase and production of ethanol as follows:

	Years Ended December 31,	
	2010	2009
Supplier A	31%	10%
Supplier B	16%	17%
Supplier C	13%	0%
Supplier D	4%	15%
Supplier E	0%	13%

Inventories – Inventories consisted primarily of bulk ethanol, unleaded fuel and corn, and are valued at the lower-of-cost-or-market, with cost determined on a first-in, first-out basis. Inventory balances consisted of the following (in thousands):

	December 31,	
	2010	2009
Finished goods	$ 11,105	$ 2,483
Work in progress	4,087	2,230
Raw materials	1,308	5,957
Other	806	1,461
Total	$ 17,306	$ 12,131

Property and Equipment – Property and equipment are stated at cost. Depreciation is computed using the straight-line method over the following estimated useful lives:

Buildings	40 years
Facilities and plant equipment	10 – 25 years
Other equipment, vehicles and furniture	5 – 10 years
Water rights	99 years

The cost of normal maintenance and repairs is charged to operations as incurred. Significant capital expenditures that increase the life of an asset are capitalized and depreciated over the estimated remaining useful life of the asset. The cost of fixed assets sold, or otherwise disposed of, and the related accumulated depreciation or amortization are removed from the accounts, and any resulting gains or losses are reflected in current operations.

Intangible Assets – The Company amortizes intangible assets with definite lives using the straight-line method over their established lives, generally 2-10 years. Additionally, the Company will test these assets with established lives for impairment if conditions exist that indicate that carrying values may not be recoverable. Possible conditions leading to the unrecoverability of these assets include changes in market conditions, changes in future economic conditions or changes in technological feasibility that impact the Company's assessments of future operations. If the Company determines that an impairment charge is needed, the charge will be recorded in selling, general and administrative expenses in the consolidated statements of operations.

Deferred Financing Costs – Deferred financing costs, which are included in other assets, are costs incurred to obtain debt financing, including all related fees, and are amortized as interest expense over the term of the related financing using the straight-line method which approximates the interest rate method. However, in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 852, *Reorganizations*, upon the Chapter 11 Filings, the Plant Owners wrote off approximately $7,545,000 of their unamortized deferred financing fees related to their term loans and working capital lines of credit, which are reclassified as liabilities subject to compromise in the Company's consolidated balance sheet as of December 31, 2009. Amortization of deferred financing costs was $1,001,000 and $1,193,000 for the years ended December 31, 2010 and 2009, respectively. Unamortized deferred financing costs were approximately $1,615,000 at December 31, 2010 and are recorded in other assets in the consolidated balance sheets.

Derivative Instruments and Hedging Activities – Derivative transactions, which can include forward contracts and futures positions on the New York Mercantile Exchange and the Chicago Board of Trade and interest rate caps and swaps are recorded on the balance sheet as assets and liabilities based on the derivative's fair value. Changes in the fair value of the derivative contracts are recognized currently in income unless specific hedge accounting criteria are met. If derivatives meet those criteria, effective gains and losses are deferred in accumulated other comprehensive income (loss) and later recorded together with the hedged item in income. For derivatives designated as a cash flow hedge, the Company formally documents the hedge and assesses the effectiveness with associated transactions. The Company has designated and documented contracts for the physical delivery of commodity products to and from counterparties as normal purchases and normal sales.

Consolidation of Variable Interest Entities – For each of the Company's VIEs, the Company must determine if it is the primary beneficiary and if so, is therefore required to treat each VIE as a consolidated subsidiary for financial reporting purposes rather than use equity investment accounting treatment. The Company consolidated the financial results of these VIEs, in which it was deemed the primary beneficiary, for their respective periods, including their entire balance sheets with the balance of the noncontrolling interest displayed as a component of equity, and the statements of operations after intercompany eliminations with an adjustment for the noncontrolling interest as net income (loss) attributed to noncontrolling interest in variable interest entities.

On June 12, 2009, the FASB amended its guidance to ASC 810, *Consolidations*, surrounding a company's analysis to determine whether any of its variable interest entities constitute controlling financial interests in a variable interest entity. This analysis identifies the primary beneficiary of a variable interest entity as the enterprise that has both of the following characteristics: (i) the power to direct the activities of a variable interest entity that most significantly impact the entity's economic performance, and (ii) the obligation to absorb losses of the entity that could potentially be significant to the variable interest entity. Additionally, an enterprise is required to assess whether it has an implicit financial responsibility to ensure that a variable interest entity operates as designed when determining whether it has the power to direct the activities of the variable interest entity that most significantly impact the entity's economic performance. The new guidance also requires ongoing reassessments of whether an enterprise is the primary beneficiary of a variable interest entity.

The Company has identified Front Range and New PE Holdco as its VIEs. The Company determined that it must consolidate Front Range through the year ended December 31, 2009 and that it must consolidate New PE Holdco since its acquisition on October 6, 2010. Under the new guidance above, the Company determined effective January 1, 2010, that it was no longer the primary beneficiary of Front Range and, as a result, no longer consolidated Front Range's results. As long as the Company is deemed the primary beneficiary of New PE Holdco, it must treat New PE Holdco as a consolidated subsidiary for financial reporting purposes.

Revenue Recognition – The Company recognizes revenue when it is realized or realizable and earned. The Company considers revenue realized or realizable and earned when there is persuasive evidence of an arrangement, delivery has occurred, the sales price is fixed or determinable, and collection is reasonably assured. The Company derives revenue primarily from sales of ethanol and related co-products. The Company recognizes revenue when title transfers to its customers, which is generally upon the delivery of these products to a customer's designated location. These deliveries are made in accordance with sales commitments and related sales orders entered into with customers either verbally or in written form. The sales commitments and related sales orders provide quantities, pricing and conditions of sales. In this regard, the Company engages in three basic types of revenue generating transactions:

- *As a producer*. Sales as a producer consist of sales of the Company's inventory produced at the Pacific Ethanol Plants.
- *As a merchant*. Sales as a merchant consist of sales to customers through purchases from third-party suppliers in which the Company may or may not obtain physical control of the ethanol or co-products, though ultimately titled to the Company, in which shipments are directed from the Company's suppliers to its terminals or direct to its customers but for which the Company accepts the risk of loss in the transactions.
- *As an agent*. Sales as an agent consist of sales to customers through purchases from third-party suppliers in which, depending upon the terms of the transactions, title to the product may technically pass to the Company, but the risks and rewards of inventory ownership remain with third-party suppliers as the Company receives a predetermined service fee under these transactions and therefore acts predominantly in an agency capacity.

Revenue from sales of third-party ethanol and co-products is recorded net of costs when the Company is acting as an agent between the customer and supplier and gross when the Company is a principal to the transaction. The Company recorded $3,043,000 and $274,000 in net sales when acting as an agent for the years ended December 31, 2010 and 2009, respectively. Several factors are considered to determine whether the Company is acting as an agent or principal, most notably whether the Company is the primary obligor to the customer and whether the Company has inventory risk and related risk of loss or whether the Company adds meaningful value to the vendor's product or service. Consideration is also given to whether the Company has latitude in establishing the sales price or has credit risk, or both.

The Company records revenues based upon the gross amounts billed to its customers in transactions where the Company acts as a producer or a merchant and obtains title to ethanol and its co-products and therefore owns the product and any related, unmitigated inventory risk for the ethanol, regardless of whether the Company actually obtains physical control of the product.

When the Company acts in an agency capacity, it recognizes revenue on a net basis or recognizes its predetermined agency fees and any associated freight only, based upon the amount of net revenues retained in excess of amounts paid to suppliers.

Shipping and Handling Costs – Shipping and handling costs are classified as a component of cost of goods sold in the accompanying consolidated statements of operations.

California Ethanol Producer Incentive Program – The Company is eligible to participate in the California Ethanol Producer Incentive Program (“CEPIP”) through the Pacific Ethanol Plants located in California. The CEPIP is a program that provides funds to the eligible California facility, up to $0.25 per gallon of production, when current production corn crush spreads drop below $0.55 per gallon. The program may provide up to $3,000,000 per plant per year of operation through 2014. For any month in which a payment is made by the CEPIP, the Company may be required to reimburse the funds within the subsequent five years from each payment date, if the corn crush spreads exceed $1.00 per gallon. Since these funds are provided to subsidize current production costs and encourage eligible facilities to either continue production or start up production in low margin environments, the Company records the proceeds, if any, as a credit to cost of goods sold. The Company will assess the likelihood of reimbursement in future periods as corn crush spreads approach $1.00 per gallon. If it becomes likely that amounts may be reimbursed, the Company will accrue a liability for such payment and recognize the costs as a reduction to cost of goods sold. The Company recorded $519,000 as a reduction to cost of goods sold for the year ended December 31, 2010.

Stock-Based Compensation – The Company accounts for the cost of employee services received in exchange for the award of equity instruments based on the fair value of the award on the date of grant. Fair value is determined as the closing market price of the Company’s common stock on the date of grant. The expense is to be recognized over the period during which an employee is required to provide services in exchange for the award. The Company estimates forfeitures at the time of grant and makes revisions, if necessary, in the second quarter of each year if actual forfeitures differ from those estimates. Based on historical experience, the Company estimated future unvested forfeitures at 5% and 3% as of December 31, 2010 and 2009, respectively. The Company recognizes stock-based compensation expense as a component of selling, general and administrative expenses in the consolidated statements of operations.

Impairment of Long-Lived Assets – The Company assesses the impairment of long-lived assets, including property and equipment and purchased intangibles subject to amortization, when events or changes in circumstances indicate that the fair value of assets could be less than their net book value. In such event, the Company assesses long-lived assets for impairment by first determining the forecasted, undiscounted cash flows the asset (or asset group) is expected to generate plus the net proceeds expected from the sale of the asset (or asset group). If this amount is less than the carrying value of the asset (or asset group), the Company will then determine the fair value of the asset (or asset group). An impairment loss would be recognized when the fair value is less than the related asset’s net book value, and an impairment expense would be recorded in the amount of the difference. Forecasts of future cash flows are judgments based on the Company’s experience and knowledge of its operations and the industries in which it operates. These forecasts could be significantly affected by future changes in market conditions, the economic environment, including inflation, and purchasing decisions of the Company’s customers.

Income Taxes – Income taxes are accounted for under the asset and liability approach, where deferred tax assets and liabilities are determined based on differences between financial reporting and tax basis of assets and liabilities, and are measured using enacted tax rates and laws that are expected to be in effect when the differences reverse. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized. Should the Company incur interest and penalties relating to tax uncertainties, such amounts would be classified as a component of interest expense, net and other income (expense), net, respectively.

Income (Loss) Per Share – Basic income (loss) per share is computed on the basis of the weighted-average number of shares of common stock outstanding during the period. Preferred dividends are deducted from net income (loss) and are considered in the calculation of income (loss) available to common stockholders in computing basic income (loss) per share.

The following tables compute basic and diluted earnings per share (in thousands, except per share data):

	Year Ended December 31, 2010		
	Income Numerator	Shares Denominator	Per-Share Amount
Net income	$ 73,892		
Preferred stock dividends	(2,847)		
Basic income per share:			
Income available to common stockholders	$ 71,045	73,600	$ 0.97
Convertible notes	657	10,669	
Preferred stock dividends	2,847	8,388	
Warrants	—	990	
Diluted income per share:			
Income available to common stockholders	$ 74,549	93,647	$ 0.80

	Year Ended December 31, 2009		
	Loss Numerator	Shares Denominator	Per-Share Amount
Net loss	$ (308,153)		
Preferred stock dividends	(3,202)		
Basic and diluted earnings per share:			
Loss available to common stockholders	$ (311,355)	57,084	$ (5.45)

The Company has accrued and unpaid dividends of $6,050,000, or $0.08 per share of common stock, in respect of its Series B Cumulative Convertible Preferred Stock ("Series B Preferred Stock"). There were an aggregate of 7,957,000 and 7,038,000 potentially dilutive shares from stock options, common stock warrants and convertible securities outstanding as of December 31, 2010 and 2009, respectively. These options, warrants and convertible securities were not considered in calculating diluted income (loss) per common share for the years ended December 31, 2010 and 2009, as their effect would be anti-dilutive. As discussed in Note 6, the Company intends to issue additional shares of its common stock in connection with its Convertible Notes (as defined in Note 6). Since December 31, 2010, through March 31, 2011, the Company issued 14,898,700 shares of its common stock in connection with its Convertible Notes. In addition, from January 1, 2011, through March 31, 2011, 528,982 shares of the Company's Series B Preferred Stock were converted into 3,105,123 shares of the Company's common stock.

Financial Instruments – The carrying value of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses are reasonable estimates of their fair value because of the short maturity of these items. The Company recorded at fair value its Convertible Notes and Warrants (each as defined in Note 6). As discussed in Note 13, the Company applied a 40% standard market recovery rate to its caps and swaps, and accordingly, applied the rate to its related debt carrying value, which were recorded in liabilities subject to compromise. The Company believes the carrying values of its other notes payable and long-term debt approximate fair value because the interest rates on these instruments are variable.

Estimates and Assumptions – The preparation of the consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates are required as part of determining allowance for doubtful accounts, estimated lives of property and equipment and intangibles, long-lived asset impairments, valuation allowances on deferred income taxes, and the potential outcome of future tax consequences of events recognized in the Company's financial statements or tax returns. Actual results and outcomes may materially differ from management's estimates and assumptions.

Subsequent Events – Management evaluates, as of each reporting period, events or transactions that occur after the balance sheet date through the date that the financial statements are issued for either disclosure or adjustment to the consolidated financial results. The Company has evaluated subsequent events up through the date of the filing of this report with the Securities and Exchange Commission.

Reclassifications – Certain prior year amounts have been reclassified to conform to the current presentation. Such reclassification had no effect on the net income (loss) reported in the consolidated statements of operations.

2. VARIABLE INTEREST ENTITIES.

Consolidation of New PE Holdco – On October 6, 2010, the Company purchased a 20% ownership interest in New PE Holdco, a VIE, from a number of New PE Holdco's existing equity owners. The Company paid $23,280,000 in cash for its 20% interest, which was approximately $1,566,000 below the fair value of New PE Holdco, which was recognized as a bargain purchase in other expense, net, in the consolidated statements of operations. The bargain purchase was determined based on the fair value of the net assets of New PE Holdco, using a combination of market data and the income approach.

The Company concluded that upon its purchase of a 20% ownership interest in New PE Holdco, the Company became the primary beneficiary of New PE Holdco and consolidated the financial results of New PE Holdco. In making this conclusion, the Company determined that New PE Holdco was a VIE and the Company, through its contractual arrangements (discussed below) had the power to direct most of its activities that most significantly impacted New PE Holdco's economic performance. Some of these activities included efficient management and operation of the Pacific Ethanol Plants, procurement of feedstock, sale of co-products and implementation of risk management strategies.

The fair value was allocated to both the Company's investment and the noncontrolling interests in variable interest entities. The gain represents the increase in value of New PE Holdco's net assets since the Company negotiated its purchase price under its call option with owners of New PE Holdco.

The following summarizes the Company's estimated fair values of New PE Holdco's tangible and intangible assets and liabilities acquired (in thousands):

Cash	$	3,786
Other current assets		20,336
Property and equipment		170,486
Other assets		1,195
Tradename		800
Total Assets		196,603
Total current liabilities		(8,522)
Long term debt		(51,279)
Other noncurrent liabilities		(12,575)
Total Liabilities		(72,376)
Noncontrolling interest in variable interest entity		(99,381)
Net Assets	$	24,846

Since the Company's acquisition of its interest in New PE Holdco, the Company has recognized approximately $72,827,000 in net sales and $5,727,000 in net losses attributed to New PE Holdco. The Company owned the Plant Owners and consolidated their results for the first half of 2010, resulting in the Company reporting the results of the Plant Owners for three of the four fiscal quarters. For the year ended December 31, 2010, the Company reported net sales of $328,332,000 and net income attributed to Pacific Ethanol of $73,892,000. Had the Company consolidated the results of New PE Holdco for all of 2010, the Company would have reported net sales of approximately $383,956,000 and net income attributed to Pacific Ethanol of $70,330,000. As the Plant Owners were consolidated into the Company's results for all of 2009, there is no difference with the Company's reported results.

Prior to the Company's acquisition of its ownership interest in New PE Holdco, the Company, directly or through one of its subsidiaries, had entered into the management and marketing agreements described below.

The Company's acquisition of its ownership interest in New PE Holdco does not impact the Company's rights or obligations under any of the following agreements. Creditors of New PE Holdco do not have recourse to Pacific Ethanol.

Asset Management Agreement – As contemplated by the Plan, on the Effective Date, the Company entered into an Asset Management Agreement ("AMA") with the Plant Owners under which the Company agreed to operate and maintain the Pacific Ethanol Plants on behalf of the Plant Owners. These services generally include, but are not limited to, administering the Plant Owners' compliance with their credit agreements and performing billing, collection, record keeping and other administrative and ministerial tasks. The Company agreed to supply all labor and personnel required to perform its services under the AMA, including the labor and personnel required to operate and maintain the production facilities.

The costs and expenses associated with the Company's provision of services under the AMA are prefunded by the Plant Owners under a preapproved budget. The Company's obligation to provide services is limited to the extent there are sufficient funds advanced by the Plant Owners to cover the associated costs and expenses.

As compensation for providing the services under the AMA, the Company is to be paid $75,000 per month for each production facility that is operational and $40,000 per month for each production facility that is idled. In addition to the monthly fee, if during any six-month period (measured on September 30 and March 31 of each year commencing March 31, 2011) a production facility has annualized earnings before interest, income taxes, depreciation and amortization ("EBITDA") per gallon of operating capacity of $0.20 or more, the Company will be paid a performance bonus equal to 3% of the increment by which EBITDA exceeds such amount. The aggregate performance bonus for all plants is capped at $2.2 million for each six-month period. The performance bonus is to be reduced by 25% if all production facilities then operating do not operate at a minimum average yield of 2.70 gallons of denatured ethanol per bushel of corn. In addition, no performance bonus is to be paid if there is a default or event of default under the Plant Owners' credit agreement resulting from their failure to pay any amounts then due and owing.

The AMA also provides the Company with an incentive fee upon any sale of a production facility to the extent the sales price is above $0.60 per gallon of annual capacity.

The AMA has an initial term of six months and may be extended for additional six-month periods at the option of the Plant Owners. In addition to typical conditions for a party to terminate the agreement prior to its expiration, the Company may terminate the AMA, and the Plant Owners may terminate the AMA with respect to any facility, at any time by providing at least 60 days prior notice of such termination.

The Company recorded revenues and New PE Holdco recorded costs of approximately $778,000, related to the AMA for the period during which New PE Holdco's financial results were consolidated with the Company's financial results. As such, these amounts have been eliminated upon consolidation.

Ethanol Marketing Agreements – As contemplated by the Plan, on the Effective Date, Kinergy entered into separate ethanol marketing agreements with each of the two Plant Owners whose facilities were then operating, which granted Kinergy the exclusive right to purchase, market and sell the ethanol produced at those facilities. Kinergy has also entered into an ethanol marketing agreement with the Plant Owner whose facility was restarted in the fourth quarter of 2010. If the remaining idled facility becomes operational, it is contemplated that Kinergy would enter into a substantially identical ethanol marketing agreement with the applicable Plant Owner. Under the terms of the ethanol marketing agreements, within ten days after delivering ethanol to Kinergy, an amount is to be paid equal to (i) the estimated purchase price payable by the third-party purchaser of the ethanol, minus (ii) the estimated amount of transportation costs to be incurred by Kinergy, minus (iii) the estimated incentive fee payable to Kinergy, which equals 1% of the aggregate third-party purchase price. To facilitate Kinergy's ability to pay amounts owing, the ethanol marketing agreements require that Kinergy maintain one or more lines of credit of at least $5.0 million in the aggregate. Each of the ethanol marketing agreements has an initial term of one year and may be extended for additional one-year periods at the option of the individual Plant Owner.

The Company recorded revenues and New PE Holdco recorded costs of approximately $623,000 related to the ethanol marketing agreements for the period during which New PE Holdco was consolidated with the Company. These amounts were eliminated upon consolidation.

Corn Procurement and Handling Agreements – As contemplated by the Plan, on the Effective Date, PAP entered into separate corn procurement and handling agreements with each of the two Plant Owners whose facilities were then operating. Kinergy has also entered into a corn procurement and handling agreement with the Plant Owner whose facility was restarted in the fourth quarter of 2010. If the remaining idled facility becomes operational, it is contemplated that PAP would enter into a substantially identical corn procurement and handling agreement with the applicable Plant Owner. Under the terms of the corn procurement and handling agreements, each facility appointed PAP as its exclusive agent to solicit, negotiate, enter into and administer, on its behalf, corn supply arrangements to procure the corn necessary to operate its facility. PAP will also provide grain handling services including, but not limited to, receiving, unloading and conveying corn into the facility's storage and, in the case of whole corn delivered, processing and hammering the whole corn.

PAP is to receive a fee of $0.50 per ton of corn delivered to each facility as consideration for its procurement services and a fee of $1.50 per ton of corn delivered as consideration for its grain handling services, each payable monthly. The Company agreed to enter into an agreement guaranteeing the performance of PAP's obligations under the corn procurement and handling agreement upon the request of a Plant Owner. Each corn procurement and handling agreement has an initial term of one year and may be extended for additional one-year periods at the option of the applicable Plant Owner.

The Company recorded revenues and New PE Holdco recorded costs of approximately $571,000, related to the corn procurement and handling agreements for the period during which New PE Holdco was consolidated with the Company. These amounts were eliminated upon consolidation.

Distillers Grains Marketing Agreements – Under the Plan, on the Effective Date, PAP entered into separate distillers grains marketing agreements with each of the two Plant Owners whose facilities were then operating, which granted PAP the exclusive right to market, purchase and sell the WDG produced at the facility. Kinergy has also entered into a distillers grains marketing agreement with the Plant Owner whose facility was restarted in the fourth quarter of 2010. If the remaining idled facility becomes operational, it is contemplated that PAP would enter into a substantially identical WDG marketing agreement with the applicable Plant Owner. Under the terms of the distillers grains marketing agreements, within ten days after a Plant Owner delivers WDG to PAP, the Plant Owner is to be paid an amount equal to (i) the estimated purchase price payable by the third-party purchaser of the WDG, minus (ii) the estimated amount of transportation costs to be incurred by PAP, minus (iii) the estimated amount of fees and taxes payable to governmental authorities in connection with the tonnage of WDG produced or marketed, minus (iv) the estimated incentive fee payable to PAP, which equals the greater of (a) 5% of the aggregate third-party purchase price, and (b) $2.00 for each ton of WDG sold in the transaction. Within the first five business days of each calendar month, the parties will reconcile and "true up" the actual purchase price, transportation costs, governmental fees and taxes, and incentive fees for all transactions entered into since the previous true-up date. Each distillers grains marketing agreement has an initial term of one year and may be extended for additional one-year periods at the option of the applicable Plant Owner.

The Company recorded revenues and New PE Holdco recorded costs of approximately $700,000, related to the distillers grain marketing agreements for the period which New PE Holdco was consolidated with the Company. These amounts were eliminated upon consolidation.

Deconsolidation and Sale of Front Range – On October 17, 2006, the Company entered into a Membership Interest Purchase Agreement with Eagle Energy, LLC to acquire Eagle Energy's 42% ownership interest in Front Range. Front Range was formed on July 29, 2004 to construct and operate a 50 million gallon dry mill ethanol facility in Windsor, Colorado. Front Range began producing ethanol in June 2006. Upon initial acquisition of the 42% interest in Front Range, the Company determined that it was the primary beneficiary, and from that point consolidated the financial results of Front Range. Except for the marketing agreement discussed below, certain contracts and arrangements between the Company and Front Range have since terminated.

The Company entered into a marketing agreement with Front Range on August 19, 2005 that provided the Company with the exclusive right to act as an agent to market and sell all of Front Range's ethanol production. The marketing agreement was amended on August 9, 2006 to extend the Company's relationship with Front Range to allow the Company to act as a merchant under the agreement. The marketing agreement was amended again on October 17, 2006 to provide for a term of six and one-half years with provisions for annual automatic renewal thereafter.

Effective January 1, 2010, the Company determined that it was no longer the primary beneficiary of Front Range and deconsolidated the financial results of Front Range. In making this conclusion, the Company determined that Front Range continued to be a variable interest entity; however, the Company did not have the power to direct most of the activities that most significantly impact the entity's economic performance. Some of these activities included efficient management and operation of its facility, procurement of feedstock, sale of co-products and implementation of risk management strategies. Further, the Company's maximum exposure was limited to its investment in Front Range. Upon deconsolidation, the Company removed $62,617,000 of assets and $18,584,000 of liabilities from its consolidated balance sheet and recorded a cumulative debit adjustment to retained earnings of $1,763,000. The periods presented in the consolidated financial statements prior to the effective date of the deconsolidation continue to include related balances associated with Front Range.

Effective January 1, 2010, the Company accounted for its investment in Front Range under the equity method, with equity earnings recorded in other income (expense) in the consolidated statements of operations

Sale of Front Range – On October 6, 2010, the Company sold its entire 42% ownership interest in Front Range for $18,500,000 in cash, resulting in a loss of $12,146,000.

3. PROPERTY AND EQUIPMENT.

Property and equipment consisted of the following (in thousands):

	December 31,	
	2010	2009
Facilities and plant equipment	$ 166,229	$ 307,142
Land	2,570	5,566
Other equipment, vehicles and furniture	4,635	4,749
Water rights – capital lease	—	1,613
Construction in progress	2,355	2,445
	175,789	321,515
Accumulated depreciation	(6,813)	(77,782)
	$ 168,976	$ 243,733

The Company, through its Plant Owners, maintains ethanol production facilities, with installed capacity of 200 million gallons per year. In accordance with the Company's policy for evaluating impairment of long-lived assets in accordance with FASB ASC 360, *Property, Plant and Equipment*, management evaluates these facilities for possible impairment based on projected future cash flows from these facilities. As of the end of 2009, the Plant Owners were involved in the Chapter 11 Filings, and the Company was negotiating the Plant Owners' reorganization, with different scenarios that could arise from the results of such negotiations. As such, the Company evaluated the various cash flow scenarios using a probability-weighted analysis. The analysis resulted in cash flows that were less than the carrying values of the facilities at December 31, 2009. The Company determined the fair value of these facilities was approximately $160,000,000, which was $247,657,000 below their carrying values, resulting in a noncash impairment charge. The Company's estimate of fair value was based on both market transactions in 2009, for similar assets, giving more weight to those transactions that closed later in 2009, as well as valuations contemplated as the Company continued its negotiations with its lenders and other interested parties. Upon the Plant Owners' emergence from their bankruptcy, New PE Holdco revalued these assets to approximately $170,485,000. Since October 6, 2010, the Company has consolidated the financial results of New PE Holdco and has therefore included these assets and their related depreciation expense in the Company's financial results.

Depreciation expense, including idled property discussed below, was $8,536,000 and $34,160,000 for the years ended December 31, 2010 and 2009, respectively. One of the Pacific Ethanol Plants was idled at December 31, 2010 and two of the Pacific Ethanol Plants were idled at December 31, 2009. The carrying values of these facilities totaled $32,000,000 and $80,000,000 at December 31, 2010 and 2009, respectively. The Company continues to depreciate these assets which resulted in depreciation expense in the aggregate of $1,559,000 and $13,415,000 for the years ended December 31, 2010 and 2009, respectively.

4. INTANGIBLE ASSETS.

Intangible assets consisted of the following (in thousands):

	Useful Life (Years)	December 31, 2010 Gross	December 31, 2010 Accumulated Amortization/ Impairment	December 31, 2010 Net Book Value	December 31, 2009 Gross	December 31, 2009 Accumulated Amortization/ Impairment	December 31, 2009 Net Book Value
Non-Amortizing:							
Kinergy tradename		$ 2,678	$ —	$ 2,678	$ 2,678	$ —	$ 2,678
Amortizing:							
Customer relationships	10	4,741	(2,737)	2,004	4,741	(2,263)	2,478
Pacific Ethanol tradename	2	800	(100)	700	—	—	—
Total Intangible Assets, net		$ 8,219	$ (2,837)	$ 5,382	$ 7,419	$ (2,263)	$ 5,156

Kinergy Tradename – The Company recorded a tradename valued at $2,678,000 in 2006 as part of its acquisition of Kinergy. The Company determined that the tradename has an indefinite life and therefore, rather than being amortized, will be tested annually for impairment. The Company did not record any impairment on its tradename for the years ended December 31, 2010 and 2009.

Customer Relationships – The Company recorded customer relationships valued at $4,741,000 as part of its acquisition of Kinergy. The Company has established a useful life of ten years for these customer relationships.

Pacific Ethanol Tradename – The Company recorded a tradename valued at $800,000 as part of its acquisition of its ownership interest in New PE Holdco, which relates to its marketing and management agreements with Pacific Ethanol, Inc. The Company has established a useful life of two years for this intangible asset.

Amortization expense associated with intangible assets totaled $574,000 and $474,000 for the years ended December 31, 2010 and 2009, respectively. The weighted-average unamortized life of the intangible assets is 3.6 years.

The expected amortization expense relating to amortizable intangible assets in each of the five years after December 31, 2010 are (in thousands):

Years Ended December 31,	Amount
2011	$ 874
2012	774
2013	474
2014	474
2015	108
Total	$ 2,704

5. DERIVATIVES.

The business and activities of the Company expose it to a variety of market risks, including risks related to changes in commodity prices and interest rates. The Company monitors and manages these financial exposures as an integral part of its risk management program. This program recognizes the unpredictability of financial markets and seeks to reduce the potentially adverse effects that market volatility could have on operating results.

Commodity Risk – Cash Flow Hedges – The Company uses derivative instruments to protect cash flows from fluctuations caused by volatility in commodity prices for periods of up to twelve months in order to protect gross profit margins from potentially adverse effects of market and price volatility on ethanol sale and purchase commitments where the prices are set at a future date and/or if the contracts specify a floating or index-based price for ethanol. In addition, the Company hedges anticipated sales of ethanol to minimize its exposure to the potentially adverse effects of price volatility. These derivatives may be designated and documented as cash flow hedges and effectiveness is evaluated by assessing the probability of the anticipated transactions and regressing commodity futures prices against the Company's purchase and sales prices. Ineffectiveness, which is defined as the degree to which the derivative does not offset the underlying exposure, is recognized immediately in cost of goods sold.

For the year ended December 31, 2010, the Company did not designate any of its derivatives as cash flow hedges. For the year ended December 31, 2009, the Company did designate certain of its derivatives as cash flow hedges, resulting in an effective loss of $17,000 and an ineffective loss in the amount of $85,000, both of which were recorded in cost of goods sold. There were no balances remaining on these derivatives as of December 31, 2010 and 2009.

Commodity Risk – Non-Designated Hedges – The Company uses derivative instruments to lock in prices for certain amounts of corn and ethanol by entering into forward contracts for those commodities. These derivatives are not designated for special hedge accounting treatment. The changes in fair value of these contracts are recorded on the balance sheet and recognized immediately in cost of goods sold. The Company recognized a loss of $178,000 and $249,000 as the change in the fair value of these contracts for the years ended December 31, 2010 and 2009, respectively. The notional balances remaining on these contracts as of December 31, 2010 and 2009 were $237,000 and $319,000, respectively.

Interest Rate Risk – The Company uses derivative instruments to minimize significant unanticipated income fluctuations that may arise from rising variable interest rate costs associated with existing and anticipated borrowings. To meet these objectives the Company purchased interest rate caps and swaps. During the year ended December 31, 2010, through both divesture of its investment and resulting deconsolidation of Front Range, and the emergence of the Plant Owners from bankruptcy, all interest rate caps and swaps were removed from the Company's consolidated statement of position as of December 31, 2010.

Over the past two years, these derivatives were, at times, designated and documented as cash flow hedges, with effectiveness evaluated by assessing the probability of anticipated interest expense and regressing the historical value of the rates against the historical value in the existing and anticipated debt. The Company recognized gains from undesignated hedges of $1,227,000 in interest expense, net, for the year ended December 31, 2010. The Company recognized gains from effectiveness in the amount of $190,000 and gains from undesignated hedges of $2,529,000 in interest expense, net, for the year ended December 31, 2009. These gains and losses resulted primarily from the Company's efforts to restructure its indebtedness prior to the Plant Owners' Chapter 11 Filings, therefore making it not probable that the related borrowings would be paid as designated. As such, the Company de-designated certain of its interest rate caps and swaps.

Non Designated Derivative Instruments – The classification and amounts of the Company's derivatives not designated as hedging instruments are as follows (in thousands):

	As of December 31, 2010			
	Assets		Liabilities	
Type of Instrument	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
Commodity contracts	Other current assets	$ —	Derivative instruments	$ 15
		$ —		$ 15

	As of December 31, 2009			
	Assets		Liabilities	
Type of Instrument	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
Interest rate contracts	Other current assets	$ 21	Derivative instruments	$ 971
			Liabilities subject to compromise	2,875
		$ 21		$ 3,846

The classification and amounts of the Company's recognized gains (losses) for its derivatives not designated as hedging instruments are as follow (in thousands):

		Realized Gain (Loss)	
		For the Years Ended December 31,	
Type of Instrument	Statements of Operations Location	2010	2009
Commodity contracts	Cost of goods sold	$ (163)	$ —
		$ (163)	$ —

		Unrealized Gain (Loss)	
		For the Years Ended December 31,	
Type of Instrument	Statements of Operations Location	2010	2009
Commodity contracts	Cost of goods sold	$ (15)	$ —
Interest rate contracts	Interest expense, net	1,227	2,529
		$ 1,212	$ 2,529

The gains for the year ended December 31, 2010 resulted from the Plant Owners' exit from bankruptcy. The gains for the year ended December 31, 2009 resulted primarily from the Company's efforts to restructure its indebtedness and, therefore, making it not probable that the related borrowings would be paid as designated. As such, the Company de-designated certain of its interest rate caps and swaps.

6. DEBT.

Long-term borrowings are summarized in the table below (in thousands):

	December 31, 2010	December 31, 2009
Convertible notes, at fair value	$ 38,108	$ —
New PE Holdco term debt	51,279	—
New PE Holdco operating line of credit	18,978	—
Notes payable to related party	—	31,500
DIP financing and rollup	—	39,654
Notes payable to related parties	1,250	2,000
Kinergy operating line of credit	13,474	2,452
Front Range related debt	—	14,497
	123,089	90,103
Less short-term portion	(38,108)	(77,364)
Long-term debt	$ 84,981	$ 12,739

Convertible Notes – On October 6, 2010, the Company raised $35,000,000 through the issuance and sale of $35,000,000 in principal amount of secured convertible notes (“Initial Notes”) and warrants (“Initial Warrants”) to purchase an aggregate of 20,588,235 shares of the Company’s common stock. On January 7, 2011, under the terms of exchange agreements with the holders of the Initial Notes and Initial Warrants, the Company issued $35,000,000 in principal amount of secured convertible notes (“Convertible Notes”) in exchange for the Initial Notes and warrants (“Warrants”) to purchase an aggregate of 20,588,235 shares of the Company’s common stock in exchange for the Initial Warrants.

The transactions contemplated by the exchange agreements were entered into to, among other things, clarify previously ambiguous language in the Initial Notes and Initial Warrants, provide the Company with additional time to meet its registration obligations and to add additional flexibility to the Company’s ability to incur indebtedness subordinated to the Convertible Notes.

The Convertible Notes mature on January 6, 2012, subject to the right of the lenders to extend the date (i) if an event of default under the Convertible Notes has occurred and is continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an event of default under the Convertible Notes, and (ii) for a period of 20 business days after the consummation of specific types of transactions involving a change of control. The Convertible Notes bear interest at the rate of 8% per annum, which is compounded monthly, with accrued interest recorded as accrued liabilities in the consolidated balance sheets. The Company accrued approximately $657,000 in interest with respect to the Convertible Notes at December 31, 2010. The accrued interest will be paid on the first installment date and monthly thereafter. The interest rate will increase to 15% per annum upon the occurrence of an event of default.

The holders of the Convertible Notes are entitled to interest, amortization payments and other amounts. The Company is required to pay a late charge of 15% on any amount of principal or other amounts due which are not paid when due.

Interest on the Convertible Notes is payable in arrears on specified installment dates. If a holder elects to convert or redeem all or any portion of a Convertible Note prior to the maturity date, all interest that would have accrued on the amount being converted or redeemed through the maturity date will also be payable. If the Company elects to redeem all or any portion of a Convertible Note prior to the maturity date, all interest that would have accrued through the maturity date on the amount redeemed will also be payable.

The Company is obligated to make amortization payments with respect to the principal amount of each Convertible Note on each of the following dates (collectively, the “Installment Dates”): (i) March 7, 2011; (ii) May 2, 2011; and (iii) the first trading day of each calendar month thereafter. The amortizing portion of the principal of each Convertible Note (the “Monthly Amortization Amount”), will equal the fraction of each Convertible Note, the numerator of which is equal to the original outstanding principal amount of the Convertible Note and the denominator of which is equal to the number of Installment Dates remaining until the maturity date.

The Company may elect to pay the Monthly Amortization Amount and applicable interest in cash or shares of its common stock, at its election, subject to the satisfaction of certain conditions.

All amounts due under the Convertible Notes are convertible at any time, in whole or in part, at the option of the holders into shares of the Company’s common stock at a specified conversion price, or Conversion Price. The Convertible Notes were initially convertible into shares of the Company’s common stock at the initial Conversion Price of $0.85 per share (“Fixed Conversion Price”). The Convertible Notes are now convertible into shares of the Company’s common stock at a price determined as follows:

- If the Company has elected to make an amortization payment in shares of common stock and the date of conversion occurs during the 15 calendar day period following (and including) the applicable Installment Date (“Initial Period”), the Conversion Price will equal the lesser of (i) the Fixed Conversion Price, and (ii) the average of the volume weighted average prices of the Company’s common stock for each of the five lowest trading days during the 20 trading day period immediately prior to the Initial Period.

- If the Company has elected to make an amortization payment in shares of common stock and the date of conversion occurs during the period beginning on the 16th calendar day after the applicable Installment Date and ending on the day immediately prior to the next Installment Date or the maturity date, the Conversion Price will equal the lesser of (i) the Fixed Conversion Price, and (ii) the closing bid price of the Company’s common stock on the trading date immediately before the date of conversion.

In addition, if an event of default has occurred and is continuing, the Conversion Price will be equal to the lesser of (i) the Fixed Conversion Price, and (ii) the closing bid price of the Company’s common stock on the trading date immediately before the date of conversion.

The Fixed Conversion Price is subject to adjustment for stock splits, combinations or similar events. The Fixed Conversion Price is subject to “full ratchet” anti-dilution adjustment where if the Company was to issue or is deemed to have issued specified securities at a price lower than the then applicable Fixed Conversion Price, the Fixed Conversion Price will immediately decline to equal the price at which the Company issued or is deemed to have issued the securities. In addition, if the Company sells or issues any securities with “floating” conversion prices based on the market price of its common stock, the holder of a Convertible Note will have the right to substitute that “floating” conversion price for the Fixed Conversion Price upon conversion of all or part of the Convertible Note.

The Company has agreed to pay “buy-in” damages of the converting holder if the Company fails to timely deliver common stock upon conversion of the Convertible Notes.

The Convertible Notes may not be converted if, after giving effect to the conversion, the holder together with its affiliates would beneficially own in excess of 4.99% or 9.99% (which percentage has been established at the election of each selling security holder) of the Company's outstanding shares of common stock (the "Blocker"). The Blocker applicable to the conversion of the Convertible Notes may be raised or lowered to any other percentage not in excess of 9.99% or less than 4.99%, subject to an advance notice period, at the option of the selling security holder.

The number of shares of the Company's common stock issuable upon conversion of the Convertible Notes is based on the Conversion Price at the time, whether by the Company or holder. The Conversion Price is not to exceed $0.85 and, unless the Company obtains a waiver, it cannot issue shares of common stock if the Conversion Price is less than $0.20. Based on this range of Conversion Prices, at December 31, 2010, the Convertible Notes were convertible into between 49,133,000 and 182,690,000 shares of the Company's common stock. At March 31, 2011, based on the current Conversion Price of $0.57, the Convertible Notes were convertible into 69,320,000 shares of the Company's common stock.

The Company has determined that the conversion feature in the Convertible Notes requires bifurcation and liability classification and measurement, at fair value, and requires evaluation at each reporting period. Under ASC 825, *Financial Instruments*, the FASB provides an alternative to bifurcation and companies may instead elect fair value measurement for the entire instrument, including the debt and conversion feature. The Company has elected the fair value alternative in order to simplify its accounting and reporting of the Convertible Notes upon issuance. Accordingly, the Company has adjusted the carrying value of the Convertible Notes to their fair value as of December 31, 2010, reflected in fair value adjustments of convertible notes and warrants in the statements of operations. The recorded fair value of the Convertible Notes of $38,108,000 differs from the stated unpaid principal amounts of $35,000,000 as of December 31, 2010. The Company recorded fair value adjustments of $2,474,000 for its initial recognition and $634,000 for subsequent changes in fair value, which is attributed to term shortening and reduction in the market value of the Company's common stock. There were no changes in fair value of the Convertible Notes due to a change in the estimated credit risk of the instruments. See Note 13 for the Company's fair value assumptions.

Registration Rights Agreements – In connection with the sale of the Initial Notes and the Initial Warrants, the Company entered into a registration rights agreement with all of the investors to file a registration statement on Form S-1 with the Securities and Exchange Commission by October 27, 2010 for the resale by the investors of 150% of the sum of (i) the maximum number of shares of common stock initially issuable upon conversion of the Initial Notes (assuming an initial Conversion Price of $0.85), (ii) the maximum number of shares of common stock payable as interest under the Initial Notes (assuming all interest became due and payable on October 25, 2010, calculated using an interest rate of 8% per annum compounded monthly through the maturity date and a Conversion Price of $0.85, which was the closing price of the Company's common stock on October 25, 2010), and (iii) the maximum number of shares of common stock issuable upon exercise of the Initial Warrants. In response to Securities and Exchange Commission comments to the Company's initial registration statement on Form S-1 filed on October 27, 2010, the Company determined that a reduction of the total number of shares to be registered would be required to satisfy the requirements of Rule 415 of the Securities Act of 1933, as amended ("Securities Act"). As a result, the Company agreed to reduce the total number of shares to be registered to an aggregate of 27,778,960 shares issuable upon conversion of the Initial Notes and in lieu of cash payments on the Initial Notes (i.e., a portion of the shares of common stock that may be issued as interest payments under the Initial Notes). Under the terms of Exchange Agreements, each of the investors agreed to amend the Company's registration obligations to allow the Company to register an aggregate of 27,778,960 shares of its common stock, consisting of 24,445,485 conversion shares and 3,333,475 interest shares, and agreed to extend the date by which a registration statement to register 24,445,485 conversion shares and 3,333,475 interest shares is declared effective from January 25, 2011 to February 8, 2011.

Prior to entering into the Exchange Agreements, the Company withdrew the registration statement it filed to register for resale by the investors certain of the shares issuable under the Initial Notes. In compliance with the Company's obligations under the registration rights agreement, as amended by the Exchange Agreements, the Company filed a registration statement on Form S-1 to register for resale by the investors 24,445,485 conversion shares and 3,333,475 interest shares issuable under the Convertible Notes.

Subject to grace periods, the Company is required to keep effective a registration statement for resale by the investors on a delayed or continuous basis at then-prevailing market prices at all times until the earlier of (i) the date as of which all of the investors may sell all of the shares of common stock required to be covered by the registration statement without restriction under Rule 144 under the Securities Act (including volume restrictions) and without the need for current public information required by Rule 144(c), if applicable), or (ii) the date on which the investors have sold all of the shares of common stock covered by the registration statement.

The Company must pay registration delay payments of 2% of each investor's initial investment in the Initial Notes per month if the registration statement ceases to be effective prior to the expiration of deadlines provided for in the registration rights agreement. The registration rights agreement contains other customary terms and conditions, including various indemnification provisions in connection with the registration of the shares of common stock underlying the Convertible Notes and the shares of common stock underlying the Warrants. The Company believes it is in compliance with these agreements.

New PE Holdco Term Debt and Working Capital Line of Credit – On the Effective Date, approximately_ $294,478,000 in prepetition and post petition secured indebtedness of the Plant Owners was restructured under a Credit Agreement entered into on June 25, 2010 among Plant Owners, as borrowers, and West LB, AG, New York Branch, and other lenders. Under the Plan, the Plant Owners' existing prepetition and post petition secured indebtedness of approximately $294,478,000 was restructured to consist of approximately $50,000,000, plus accrued interest of $1,279,000, in three-year term loans and a new three-year revolving credit facility of up to $35,000,000 to fund working capital requirements of New PE Holdco. The term loan and revolving credit facility require monthly interest payments at a floating rate equal to the three month London Interbank Offered Rate ("LIBOR") or the Prime Rate of interest, as elected by the borrower, plus 10.0%. At December 31, 2010, the rate was approximately 13.75%. Repayments of principal are based on available free cash flow of the borrower, until maturity, when all principal amounts are due. During 2010, no principal payments were made on these facilities. The term loan and revolving credit facility represent permanent financing and are collateralized by a perfected, first-priority security interest in all of the assets, including inventories and all rights, title and interest in all tangible and intangible assets, of New PE Holdco.

Notes Payable to Related Party – In November 2008, the Company restructured certain construction related loans of $30,000,000 in the aggregate with Lyles United, LLC ("Lyles United") by paying all accrued and unpaid interest thereon and issuing an amended and restated promissory note in the principal amount of $30,000,000. The amended and restated promissory note was due March 15, 2009 and accrued interest at the Prime Rate of interest, plus 3.00. The Company and Lyles United jointly instructed PEI California pursuant to an Irrevocable Joint Instruction Letter to remit directly to Lyles United any cash distributions received by PEI California on account of its ownership interests in Front Range until such time as the amended and restated promissory note was repaid in full.

In October 2008, upon completion of the Stockton facility, the Company converted final unpaid construction costs to an unsecured note payable. The note payable was between the Company and Lyles Mechanical Co. in the principal amount of $1,500,000 and was due with accrued interest on March 31, 2009. Interest accrued at the Prime Rate of interest, plus 2.00%.

In February 2009, the Company notified Lyles United and Lyles Mechanical Co. (collectively, “Lyles”) that it would not be able to pay off its notes due March 15 and March 31, 2009 and as a result, entered into a forbearance agreement. Under the terms of the forbearance agreement, Lyles agreed to forbear from exercising rights and remedies against the Company through April 30, 2009. These forbearances were not extended.

In March 2010, the Company announced agreements designed to satisfy this indebtedness. Socius CG II, Ltd. (“Socius”) entered into purchase agreements with Lyles under which Socius would purchase claims in respect of the Company’s indebtedness in up to $5,000,000 tranches, which claims Socius would then settle in exchange for shares of the Company’s common stock. Each tranche was to be settled in exchange for the Company’s common stock valued at a 20% discount to the volume weighted average price (“VWAP”) of the Company’s common stock over a predetermined trading period, which ranged from five to 20 trading days, immediately following the date on which the shares were first issued to Socius.

Under this arrangement, the Company issued shares to Socius which settled outstanding debt previously owed to Lyles in four successive transactions. For the year ended December 31, 2010, the Company issued an aggregate of 24,087,000 shares with an aggregate fair value of $21,159,000 in exchange for $19,000,000 in debt extinguishment, resulting in an aggregate loss of $2,159,000. The Company determined fair value based on the closing price of its shares on the last day of the applicable trading period, which was the date the net shares to be issued were determinable by the Company.

On October 6, 2010, the Company paid in full all remaining principal, accrued interest and fees owed to Lyles using the proceeds from the sale of its interest in Front Range and the issuance and sale of the Convertible Notes and Warrants.

DIP Financing and Rollup – Certain of the Plant Owners’ existing lenders (the “DIP Lenders”) entered into a credit agreement for up to a total of $25,000,000 in debtor-in-possession financing (“DIP Financing”), not including a DIP rollup amount (as defined below). The DIP Financing provided for a first priority lien in the Chapter 11 Filings. Proceeds of the DIP Financing were used, among other things, to fund the working capital and general corporate needs of the Company and the costs of the Chapter 11 Filings in accordance with an approved budget. The DIP Financing allowed the DIP Lenders a first priority lien on a dollar-for-dollar basis of their term loans and working capital lines of credit funded prior to the Chapter 11 Filings for each dollar of DIP Financing (“DIP Rollup”). As the Plant Owners drew down on their DIP Financing, an equivalent amount was reclassified from liabilities subject to compromise to DIP financing and rollup. For the period the DIP Financing was outstanding, the interest rate was approximately 14% per annum. As discussed in Note 7, the DIP Financing and DIP Rollup balances were removed from the Company’s consolidated financial statements.

Notes Payable to Related Parties – On March 31, 2009, the Company’s Chairman of the Board and its Chief Executive Officer provided funds in an aggregate amount of $2,000,000 for general working capital purposes, in exchange for two unsecured promissory notes issued by the Company. Interest on the unpaid principal amounts accrues at a rate of 8.00% per annum. The maturity date of these notes was initially extended to January 5, 2011. On October 29, 2010, the Company paid all accrued interest and $750,000 in principal under these notes. On November 5, 2010, the Company entered into amendments to these notes, further extending their maturity dates to March 31, 2012.

Kinergy Line of Credit – Kinergy has a working capital line of credit with Wells Fargo Capital Finance, LLC in an aggregate amount of up to $20,000,000 based on Kinergy's eligible accounts receivable and inventory levels, subject to any reserves established by Wells Fargo Capital Finance LLC. The credit facility is subject to certain other sublimits, including as to inventory loan limits. Interest accrues under the line of credit at a rate equal to (i) three month LIBOR, plus (ii) a specified applicable margin ranging between 3.50% and 4.50%. The applicable margin was 4.3% at December 31, 2010. The credit facility's monthly unused line fee is 0.50% of the amount by which the maximum credit under the facility exceeds the average daily principal balance. Kinergy is also required to pay customary fees and expenses associated with the credit facility and issuances of letters of credit. In addition, Kinergy is responsible for a $3,000 monthly servicing fee. Payments that may be made by Kinergy to the Company as reimbursement for management and other services provided by the Company to Kinergy are limited to $750,000 per fiscal quarter in 2011, $800,000 per fiscal quarter in 2012, and $850,000 per fiscal quarter in 2013. Kinergy is required to meet specified EBITDA and fixed coverage ratio financial covenants under the credit facility and is prohibited from incurring any additional indebtedness (other than specific intercompany indebtedness) or making any capital expenditures in excess of $100,000 absent the lender's prior consent. The Company believes it is in compliance with these covenants. Kinergy's obligations under the credit facility are secured by a first-priority security interest in all of its assets in favor of the lender. The line of credit matures on December 31, 2013. The Company has guaranteed all of Kinergy's obligations under the line of credit.

Front Range Related Debt – Front Range had a swap note, which was a term loan, with a floating interest rate, established on a quarterly basis, equal to the 90-day LIBOR plus 3.00%. Front Range entered into a swap contract with the lender to provide a fixed rate of 8.16%. The loan matured in five years, but required principal payments due based on a ten-year amortization schedule. In addition, Front Range had a long-term revolving note in the amount of $2,500,000 and carried a floating interest rate equal to the greater of 5.00% or the 30-day LIBOR, plus 3.25-4.00%, depending on a debt-to-net worth ratio. As of December 31, 2009, the interest rate was 5.00%. The revolving loan matured in five years, but was amortized over ten years with a final payment due August 10, 2011. As of December 31, 2009, there were no borrowings on the revolving note.

The Front Range related notes referred to above represented permanent financing and were collateralized by a perfected, priority security interest in all of the assets of Front Range, including inventories and all rights, title and interest in all tangible and intangible assets of Front Range; a pledge of 100% of the ownership interest in Front Range; an assignment of all revenues produced by Front Range; a pledge and assignment of Front Range's material contracts and documents, to the extent assignable; all contractual cash flows associated with such agreements; and any other collateral security as the lender may reasonably request. These collateralizations restricted the assets and revenues as well as future financing strategies of Front Range, the Company's VIE, but did not apply to, nor have bearing upon any financing strategies that the Company may have chosen to undertake.

Front Range was subject to certain loan covenants. Under these covenants, Front Range was required to maintain a certain fixed-charge coverage ratio, a minimum level of working capital and a minimum level of net worth. The covenants also set a maximum amount of additional debt that may be incurred by Front Range. The covenants also limited annual distributions that may have been made to owners of Front Range, including the Company, based on Front Range's leverage ratio.

Effective January 1, 2010, the Company deconsolidated the results of Front Range, and along with the other assets and liabilities of Front Range, the Company removed all debt balances associated with Front Range.

Interest Expense on Borrowings – Interest expense on all borrowings discussed above, which excludes certain liabilities of the Plant Owners, was $6,261,000 and $13,771,000 for the years ended December 31, 2010 and 2009, respectively.

Long-term debt due in each of the next three years is as follows (in thousands):

Years Ended December 31,	Amount
2011	$ 38,108
2012	1,250
2013	83,731
Total	$ 123,089

7. ACCOUNTING FOR EMERGENCE FROM BANKRUPTCY

Gain on Bankruptcy Exit – On the Effective Date, the Company ceased to own the Plant Owners as they emerged from bankruptcy. As a result, the Company removed the related assets and liabilities from its consolidated financial statements, resulting in a net gain from the bankruptcy exit of $119,408,000. The classification and amounts of the net liabilities removed at June 29, 2010 were as follows (in thousands):

Current Assets:		
Cash and cash equivalents	$	1,302
Accounts receivable – trade		562
Accounts receivable – Kinergy and PAP		5,212
Inventories		4,841
Other current assets		2,166
Total current assets		14,083
Property and equipment, net		160,402
Other assets		585
Total Assets	$	175,070
Current Liabilities:		
Accounts payable and other liabilities	$	21,368
DIP financing and rollup		50,000
Liabilities subject to compromise		223,110
Total Liabilities	$	294,478
Net Gain	$	119,408

Liabilities Subject to Compromise – Liabilities subject to compromise refers to prepetition obligations which may be impacted by the Chapter 11 Filings. These amounts represented the Company's estimate of known or potential prepetition obligations to be resolved in connection with the Chapter 11 Filings. On June 29, 2010, the liabilities subject to compromise were removed from the Company's balance sheet as discussed above.

Liabilities subject to compromise were as follows (in thousands):

	December 31, 2009
Term loans	$ 209,750
Working capital lines of credit	16,906
Accounts payable trade and accrued expenses	12,886
Derivative instruments – interest rate swaps	2,875
Total liabilities subject to compromise	$ 242,417

Contractual interest expense represents amounts due under the contractual terms of outstanding debt, including liabilities subject to compromise for which interest expense may not be recognized in accordance with the provisions of FASB ASC 852. The Plant Owners did not record contractual interest expense on certain unsecured prepetition debt subject to compromise from the date of the Chapter 11 Filings. The Plant Owners did, however, accrue interest on their DIP Financing and DIP Rollup as these amounts were likely to be paid in full upon confirmation of a plan of reorganization. On the Effective Date, the DIP Financing was converted to a term loan of the Plant Owners. For the years ended December 31, 2010 and 2009, the Company recorded interest expense related to the Plant Owners of approximately $2,356,000 and $11,508,000, respectively, through their emergence from bankruptcy. Had the Company accrued interest on all of the Plant Owners' liabilities subject to compromise for the years ended December 31, 2010 and 2009, interest expense would have been approximately $14,932,000 and $28,993,000, respectively.

Reorganization Costs – In accordance with FASB ASC 852, revenues, expenses, realized gains and losses, and provisions for losses that can be directly associated with the reorganization and restructuring of the business must be reported separately as reorganization items in the statements of operations. During the years ended December 31, 2010 and 2009, the Plant Owners settled a prepetition accrued liability with a vendor, resulting in a realized gain. Professional fees directly related to the reorganization include fees associated with advisors to the Plant Owners, unsecured creditors, secured creditors and administrative costs in complying with reporting rules under the Bankruptcy Code. As discussed in Note 1, the Company wrote off a portion of its unamortized deferred financing fees on the debt which is considered unlikely to be repaid by the Plant Owners.

The Plant Owners' reorganization costs consisted of the following (in thousands):

	December 31,	
	2010	2009
Professional fees	$ 4,026	$ 5,198
Write-off of unamortized deferred financing fees	—	7,545
Settlement of accrued liability	—	(2,008)
DIP financing fees	—	750
Trustee fees	127	122
Total	$ 4,153	$ 11,607

8. INCOME TAXES.

The asset and liability method is used to account for income taxes. Under this method, deferred tax assets and liabilities are recognized for tax credits and for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is recorded to reduce the carrying amounts of deferred tax assets unless it is more likely than not that those assets will be realized.

The Company files a consolidated federal income tax return. This return includes all corporate companies 80% or more owned by the Company as well as the Company's pro-rata share of taxable income from pass-through entities in which the Company holds an ownership interest. State tax returns are filed on a consolidated, combined or separate basis depending on the applicable laws relating to the Company and its subsidiaries.

The Company recorded no provision for income taxes for the years ended December 31, 2010 and 2009.

A reconciliation of the differences between the United States statutory federal income tax rate and the effective tax rate as provided in the consolidated statements of operations is as follows:

	Years Ended December 31,	
	2010	2009
Statutory rate	(35.0%)	(35.0%)
State income taxes, net of federal benefit	(4.9)	(5.4)
Stock compensation	(1.8)	0.0
Change in valuation allowance	41.5	40.2
Other	0.2	0.2
Effective rate	0.0%	0.0%

Deferred income taxes are provided using the asset and liability method to reflect temporary differences between the financial statement carrying amounts and tax bases of assets and liabilities using presently enacted tax rates and laws. The components of deferred income taxes included in the consolidated balance sheets were as follows (in thousands):

	December 31, 2010	December 31, 2009
Deferred tax assets:		
Net operating loss carryforward	$ 144,814	$ 97,043
Capital loss carryover	7,180	—
Convertible notes and warrants	4,520	—
Stock-based compensation	3,446	3,309
Impairment of asset group	—	100,661
Deferred financing costs	—	5,476
Investment in partnerships	—	4,365
Derivative instruments mark-to-market	—	1,157
Other accrued liabilities	231	161
Other	279	918
Total deferred tax assets	160,470	213,090
Deferred tax liabilities:		
Intangibles	(1,901)	(2,088)
Investment in New PE Holdco	(756)	—
Fixed assets	(191)	(22,681)
Total deferred tax liabilities	(2,848)	(24,769)
Valuation allowance	(158,713)	(189,412)
Net deferred tax liabilities	$ (1,091)	$ (1,091)
Classified in balance sheet as:		
Deferred income tax benefit (current assets)	$ —	$ —
Deferred income taxes (long-term liability)	(1,091)	(1,091)
	$ (1,091)	$ (1,091)

At December 31, 2010 and 2009, the Company had federal net operating loss carryforwards of approximately $373,623,000 and $255,706,000, and state net operating loss carryforwards of approximately $388,479,000 and $260,792,000, respectively. These net operating loss carryforwards expire at various dates beginning in 2013. The deferred tax asset for the Company's net operating loss carryforwards at December 31, 2010 does not include $5,420,000 which relates to the tax benefits associated with warrants and non-statutory options exercised by employees, members of the board and others under the various incentive plans. These tax benefits will be recognized in stockholders' equity (deficit) rather than in the statements of operations but not until the period in which these amounts decrease taxes payable.

A portion of the Company's net operating loss carryforwards will be subject to provisions of the tax law that limit the use of losses incurred by a company prior to becoming a member of a consolidated group as well as losses that existed at the time there is a change in control of an enterprise. The amount of the Company's net operating loss carryforwards that would be subject to these limitations was approximately $76,928,000 at December 31, 2010.

In assessing whether the deferred tax assets are realizable, a more likely than not standard is applied. If it is determined that it is more likely than not that deferred tax assets will not be realized, a valuation allowance must be established against the deferred tax assets. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which the associated temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income and tax planning strategies in making this assessment.

A valuation allowance has been established in the amount of $158,713,000 and $189,412,000 at December 31, 2010 and 2009, respectively, based on Company's assessment of the future realizability of certain deferred tax assets. For the years ended December 31, 2010 and 2009, the Company recorded an increase (decrease) in the valuation allowance of $(30,699,000) and $124,034,000, respectively. The valuation allowance on deferred tax assets is related to future deductible temporary differences and net operating loss carryforwards (exclusive of net operating losses associated with items recorded directly to equity) for which the Company has concluded it is more likely than not that these items will not be realized in the ordinary course of operations.

At December 31, 2010, the Company had no increase or decrease in unrecognized income tax benefits for the year as a result of tax positions taken in a prior or current period. There was no accrued interest or penalties relating to tax uncertainties at December 31, 2010. Unrecognized tax benefits are not expected to increase or decrease within the next twelve months.

The Company is subject to income tax in the United States federal jurisdiction and various state jurisdictions and has identified its federal tax return and tax returns in state jurisdictions below as "major" tax filings. These jurisdictions, along with the years still open to audit under the applicable statutes of limitation, are as follows:

Jurisdiction	Tax Years
Federal	2007 – 2009
California	2006 – 2009
Colorado	2006 – 2009
Idaho	2007 – 2009
Nebraska	2007 – 2008
Oregon	2007 – 2009
Wisconsin	2006 – 2008

However, because the Company had net operating losses and credits carried forward in several of the jurisdictions, including the United States federal and California jurisdictions, certain items attributable to closed tax years are still subject to adjustment by applicable taxing authorities through an adjustment to tax attributes carried forward to open years.

9. PREFERRED STOCK.

The Company has 6,205,853 undesignated shares of authorized and unissued preferred stock, which may be designated and issued in the future on the authority of the Company's Board of Directors. As of December 31, 2010, the Company had the following designated preferred stock:

Series A Preferred Stock – The Company has authorized 1,684,375 shares of Series A Cumulative Redeemable Convertible Preferred Stock ("Series A Preferred Stock"), with none outstanding at December 31, 2010 and 2009. Shares of Series A Preferred Stock that are converted into shares of the Company's common stock revert to undesignated shares of authorized and unissued preferred stock.

Upon any issuance, the Series A Preferred Stock would rank senior in liquidation and dividend preferences to the Company's common stock. Holders of Series A Preferred Stock would be entitled to quarterly cumulative dividends payable in arrears in cash in an amount equal to 5% per annum of the purchase price per share of the Series A Preferred Stock. The holders of the Series A Preferred Stock would have conversion rights initially equivalent to two shares of common stock for each share of Series A Preferred Stock, subject to customary antidilution adjustments. Certain specified issuances will not result in antidilution adjustments. The shares of Series A Preferred Stock would also be subject to forced conversion upon the occurrence of a transaction that would result in an internal rate of return to the holders of the Series A Preferred Stock of 25% or more. Accrued but unpaid dividends on the Series A Preferred Stock are to be paid in cash upon any conversion of the Series A Preferred Stock.

The holders of Series A Preferred Stock would have a liquidation preference over the holders of the Company's common stock equivalent to the purchase price per share of the Series A Preferred Stock plus any accrued and unpaid dividends on the Series A Preferred Stock. A liquidation would be deemed to occur upon the happening of customary events, including transfer of all or substantially all of the Company's capital stock or assets or a merger, consolidation, share exchange, reorganization or other transaction or series of related transaction, unless holders of 66 2/3% of the Series A Preferred Stock vote affirmatively in favor of or otherwise consent to such transaction.

Series B Preferred Stock – The Company has authorized 2,109,772 shares of Series B Preferred Stock, with 1,455,924 and 2,346,152 outstanding at December 31, 2010 and 2009, respectively. Shares of Series B Preferred Stock that are converted into shares of the Company's common stock revert to undesignated shares of authorized and unissued preferred stock.

On March 18, 2008, the Company entered into a Securities Purchase Agreement (the "Purchase Agreement") with Lyles United. The Purchase Agreement provided for the sale by the Company and the purchase by Lyles United of (i) 2,051,282 shares of the Company's Series B Preferred Stock, all of which were initially convertible into an aggregate of 6,153,846 shares of the Company's common stock based on an initial three-for-one conversion ratio, and (ii) a warrant to purchase an aggregate of 3,076,923 shares of the Company's common stock at an exercise price of $7.00 per share. On March 27, 2008, the Company consummated the purchase and sale of the Series B Preferred Stock. Upon issuance, the Company recorded $39,898,000, net of issuance costs, in stockholders' equity (deficit). The warrant has an exercise period of ten years from the date of issuance.

On May 20, 2008, the Company entered into a Securities Purchase Agreement (the "May Purchase Agreement") with Neil M. Koehler, William L. Jones, Paul P. Koehler and Thomas D. Koehler (the "May Purchasers"). The May Purchase Agreement provided for the sale by the Company and the purchase by the May Purchasers of (i) an aggregate of 294,870 shares of the Company's Series B Preferred Stock, all of which were initially convertible into an aggregate of 884,610 shares of the Company's common stock based on an initial three-for-one conversion ratio, and (ii) warrants to purchase an aggregate of 442,305 shares of the Company's common stock at an exercise price of $7.00 per share. On May 22, 2008, the Company consummated the purchase and sale under the May Purchase Agreement. Upon issuance, the Company recorded $5,745,000, net of issuance costs, in stockholders' equity (deficit). The warrants have an exercise period of ten years from the date of issuance.

The Series B Preferred Stock ranks senior in liquidation and dividend preferences to the Company's common stock. Holders of Series B Preferred Stock are entitled to quarterly cumulative dividends payable in arrears in cash in an amount equal to 7.00% per annum of the purchase price per share of the Series B Preferred Stock; however, subject to the provisions of the Letter Agreement described below, such dividends may, at the option of the Company, be paid in additional shares of Series B Preferred Stock based initially on liquidation value of the Series B Preferred Stock. The holders of Series B Preferred Stock have a liquidation preference over the holders of the Company's common stock initially equivalent to $19.50 per share of the Series B Preferred Stock plus any accrued and unpaid dividends on the Series B Preferred Stock. A liquidation will be deemed to occur upon the happening of customary events, including the transfer of all or substantially all of the capital stock or assets of the Company or a merger, consolidation, share exchange, reorganization or other transaction or series of related transaction, unless holders of 66 2/3% of the Series B Preferred Stock vote affirmatively in favor of or otherwise consent that such transaction shall not be treated as a liquidation. The Company believes that such liquidation events are within its control and therefore has classified the Series B Preferred Stock in stockholders' equity (deficit).

The holders of the Series B Preferred Stock have conversion rights initially equivalent to three shares of common stock for each share of Series B Preferred Stock. The conversion ratio is subject to customary antidilution adjustments. In addition, antidilution adjustments are to occur in the event that the Company issues equity securities at a price equivalent to less than the then conversion ratio, initially $6.50 per share, including derivative securities convertible into equity securities (on an as-converted or as-exercised basis). The shares of Series B Preferred Stock are also subject to forced conversion upon the occurrence of a transaction that would result in an internal rate of return to the holders of the Series B Preferred Stock of 25% or more. The forced conversion is to be based upon the conversion ratio as last adjusted. Accrued but unpaid dividends on the Series B Preferred Stock are to be paid in cash upon any conversion of the Series B Preferred Stock.

The holders of Series B Preferred Stock vote together as a single class with the holders of the Company's common stock on all actions to be taken by the Company's stockholders. Each share of Series B Preferred Stock entitles the holder to the number of votes equal to the number of shares of common stock into which each share of Series B Preferred Stock is convertible on all matters to be voted on by the stockholders of the Company. Notwithstanding the foregoing, the holders of Series B Preferred Stock are afforded numerous customary protective provisions with respect to certain actions that may only be approved by holders of a majority of the shares of Series B Preferred Stock.

In connection with the closing of the above mentioned sales of its Series B Preferred Stock, the Company entered into Letter Agreements with Lyles United and the May Purchasers under which the Company expressly waived its rights under the Certificate of Designations to make dividend payments in additional shares of Series B Preferred Stock in lieu of cash dividend payments without the prior written consent of Lyles United and the May Purchasers.

Registration Rights Agreement – In connection with the closing of the sale of its Series B Preferred Stock, the Company entered into a Registration Rights Agreement with Lyles United. The Registration Rights Agreement is to be effective until the holders of the Series B Preferred Stock, and their affiliates, as a group, own less than 10% for each of the series issued, including common stock into which such Series B Preferred Stock has been converted. The Registration Rights Agreement provides that holders of a majority of the Series B Preferred Stock, including common stock into which such Series B Preferred Stock has been converted, may demand and cause the Company, at any time after the first anniversary of the Closing, to register on their behalf the shares of common stock issued, issuable or that may be issuable upon conversion of the Preferred Stock and as payment of dividends thereon, and upon exercise of the related warrants (collectively, the "Registrable Securities"). The Company is required to keep such registration statement effective until such time as all of the Registrable Securities are sold or until such holders may avail themselves of Rule 144 for sales of Registrable Securities without registration under the Securities Act of 1933, as amended. The holders are entitled to two demand registrations on Form S-1 and unlimited demand registrations on Form S-3; provided, however, that the Company is not obligated to effect more than one demand registration on Form S-3 in any calendar year. In addition to the demand registration rights afforded the holders under the Registration Rights Agreement, the holders are entitled to unlimited "piggyback" registration rights. These rights entitle the holders who so elect to be included in registration statements to be filed by the Company with respect to other registrations of equity securities. The Company is responsible for all costs of registration, plus reasonable fees of one legal counsel for the holders, which fees are not to exceed $25,000 per registration. The Registration Rights Agreement includes customary representations and warranties on the part of both the Company and the holders and other customary terms and conditions.

The Company recorded preferred stock dividends of $2,847,000 and $3,202,000 for the years ended December 31, 2010 and 2009, respectively.

10. COMMON STOCK AND WARRANTS.

On October 6, 2010, as part of the Convertible Note financing, the Company issued Warrants which are immediately exercisable and entitle the holders of the Warrants to purchase up to an aggregate of 20,588,235 shares of the Company's common stock until October 6, 2017 at an exercise price of $0.85 per share ("Warrant Exercise Price"), which price is subject to adjustment. The Warrants include both cash and cashless exercise provisions.

The Warrant Exercise Price is subject to adjustment for stock splits, combinations or similar events, and, in such event, the number of shares issuable upon the exercise of the Warrants will also be adjusted so that the aggregate Warrant Exercise Price shall be the same immediately before and immediately after the adjustment. In addition, the Warrant Exercise Price is also subject to a "full ratchet" anti-dilution adjustment where if the Company issues or is deemed to have issued securities at a price lower than the then applicable Warrant Exercise Price, the Warrant Exercise Price will immediately decline to equal the price at which the Company issues or is deemed to have issued its common stock.

If the Company sells or issues any securities with "floating" conversion prices based on the market price of its common stock, a holder of a Warrant has the right to substitute the "floating" conversion price for the Warrant Exercise Price upon exercise of all or part the Warrant.

Similar to the Convertible Notes, the Warrants require payments to be made by the Company for failure to deliver the shares of common stock issuable upon exercise.

The Warrants may not be converted if, after giving effect to the conversion, the investor together with its affiliates would beneficially own in excess of 4.99% or 9.99% (which percentage has been established at the election of each selling security holder) of the Company's outstanding shares of common stock. The blocker applicable to the exercise of the Warrants may be raised or lowered, subject to an advance notice period, to any other percentage not in excess of 9.99%.

If the Company issues options, convertible securities, warrants, stock, or similar securities to holders of its common stock, each holder of a Warrant has the right to acquire the same as if the holder had exercised its Warrant. The Warrants prohibit the Company from entering into specified transactions involving a change of control, unless the successor entity is a publicly traded corporation that assumes all of the Company's obligations under the Warrants under a written agreement approved by all of the holders of the Warrants before the transaction is completed. When there is a transaction involving a permitted change of control, a holder of a Warrant will have the right to force the Company to repurchase the holder's Warrants for a purchase price in cash equal to the Black Scholes value of the then unexercised portion of the Warrants.

If at any time after the date the Company has initially satisfied certain specified conditions, and (i) its common stock trades at a price equal to or greater than $2.12 per share for 20 trading days in any 30 consecutive trading day period ("Mandatory Exercise Measuring Period"), (ii) the average daily dollar trading volume of the Company's common stock for each trading day during the Mandatory Exercise Measuring Period exceeds $250,000 per day, and (iii) all such conditions are then satisfied, the Company will have the right to require the holders of the Warrants to fully exercise all, but not less than all, of the Warrants (subject to the blocker).

The initial number of shares of the Company's common stock issuable upon exercise of the Warrants is 20,588,235, which is based on the current exercise price of $0.85 per share. The exercise price is subject to adjustments as noted above, and therefore, there is no maximum number of shares of the Company's common stock that may be issued, or if any, prior to the end of the term of the Warrants.

The Company has determined that the Warrants did not meet the conditions for classification in shareholders' equity and as such, has recorded them as a liability at fair value. The Company must revalue the Warrants at each reporting period. Accordingly, the Company recorded fair value adjustments of $7,445,000 for their initial recognition and a gain of $1,727,000 for subsequent changes in fair value, which is attributed to term shortening and reduction in the market value of the Company's common stock, resulting in the Warrants becoming out of the money at December 31, 2010. See Note 13 for the Company's fair value assumptions.

In March 2008, the Company issued warrants to purchase an aggregate of 3,076,923 shares of common stock at an exercise price of $7.00 per share, which expire in 2018. In May 2008, the Company issued warrants to purchase an aggregate of 442,305 shares of common stock at an exercise price of $7.00 per share, which expire in 2018. See Note 9—Preferred Stock. In March 2008, the Company also issued warrants to purchase 100,000 shares of common stock at an exercise price of $8.00 per share, which expired unexercised in 2009.

In May 2008, the Company issued warrants to purchase an aggregate of 3,000,000 shares of common stock at an exercise price of $7.10 per share, which expire in 2013.

The following table summarizes warrant activity for the years ended December 31, 2010 and 2009 (number of shares in thousands):

	Number of Shares	Price per Share	Weighted Average Exercise Price
Balance at December 31, 2008	6,619	$7.00 – $8.00	$ 7.06
Warrants expired	(100)	$8.00	$ 8.00
Balance at December 31, 2009	6,519	$7.00 – $7.10	$ 7.05
Warrants issued	20,588	$0.85	$ 0.85
Balance at December 31, 2010	27,107	$0.85 – $7.10	$ 2.34

11. STOCK-BASED COMPENSATION.

The Company has three equity incentive compensation plans: an Amended 1995 Incentive Stock Plan, a 2004 Stock Option Plan and a 2006 Stock Incentive Plan.

2004 Stock Option Plan – The 2004 Stock Option Plan authorized the issuance of incentive stock options ("ISOs") and non-qualified stock options ("NQOs") to the Company's officers, directors or key employees or to consultants that do business with the Company for up to an aggregate of 2,500,000 shares of common stock. On September 7, 2006, the Company terminated the 2004 Stock Option Plan, except to the extent of issued and outstanding options then existing under the plan. The Company had 80,000 stock options outstanding under its 2004 Stock Option Plan at December 31, 2010 and 2009.

Summaries of the status of Company's stock option plans as of December 31, 2010 and 2009 and of changes in options outstanding under the Company's plans during those years are as follows (in thousands, except exercise prices):

	Years Ended December 31,			
	2010		2009	
	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
Outstanding at beginning of year	80	$ 8.26	130	$ 7.37
Terminated	—	—	(50)	5.95
Outstanding at end of year	80	$ 8.26	80	$ 8.26
Options exercisable at end of year	80	$ 8.26	80	$ 8.26

Stock options outstanding as of December 31, 2010, were as follows (number of shares in thousands):

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
$8.25-$8.30	80	4.57	$8.26	80	$8.26

The options outstanding and exercisable at December 31, 2010 and 2009 had no intrinsic value.

2006 Stock Incentive Plan – The 2006 Stock Incentive Plan authorizes the issuance of options, restricted stock, restricted stock units, stock appreciation rights, direct stock issuances and other stock-based awards to the Company's officers, directors or key employees or to consultants that do business with the Company for up to an aggregate of 6,000,000 shares of common stock.

The Company grants to certain employees and directors shares of restricted stock under its 2006 Stock Incentive Plan pursuant to restricted stock agreements. A summary of unvested restricted stock activity is as follows (shares in thousands):

	Number of Shares	Weighted Average Grant Date Fair Value
Unvested at December 31, 2008	752	$ 7.11
Vested	(214)	$ 8.03
Canceled	(256)	$ 5.23
Unvested at December 31, 2009	282	$ 8.09
Issued	4,092	$ 1.20
Vested	(1,014)	$ 2.13
Canceled	(76)	$ 6.52
Unvested at December 31, 2010	3,284	$ 1.38

Stock-based compensation expense related to employee and non-employee stock grants and options recognized in income were as follows (in thousands):

	Years Ended December 31, 2010	2009
Employees	$ 1,895	$ 1,660
Non-employees	576	264
Total stock-based compensation expense	$ 2,471	$ 1,924

At December 31, 2010, the total compensation cost related to unvested awards which had not been recognized was $4,523,000 and the associated weighted-average period over which the compensation cost attributable to those unvested awards would be recognized was 2.4 years.

12. COMMITMENTS AND CONTINGENCIES.

<u>*Commitments*</u> – The following is a description of significant commitments at December 31, 2010:

Operating Leases – Future minimum lease payments required by non-cancelable operating leases in effect at December 31, 2010 are as follows (in thousands):

Years Ended December 31,	Amount
2011	$ 1,669
2012	1,240
2013	1,196
2014	735
2015	747
Thereafter	4,521
Total	$ 10,108

Total rent expense during the years ended December 31, 2010 and 2009 was $1,598,000 and $2,320,000, respectively.

Sales Commitments – At December 31, 2010, the Company had entered into sales contracts with its major customers to sell certain quantities of ethanol, WDG and syrup. The volumes indicated in the indexed price contracts table will be sold at publicly-indexed sales prices determined by market prices in effect on their respective transaction dates (in thousands):

	Fixed-Price Contracts
Ethanol	$ 4,109
WDG and syrup	2,508
Total	$ 6,617

	Indexed-Price Contracts (Volume)
Ethanol (gallons)	115,333
WDG and syrup	36

Purchase Commitments – At December 31, 2010, the Company had fixed-price purchase contracts with its suppliers to purchase $4,688,000 of ethanol and indexed-price purchase contracts with its suppliers to purchase 18,500 gallons of ethanol. These fixed- and indexed-price commitments will be satisfied throughout 2011.

Contingencies – The following is a description of significant contingencies at December 31, 2010:

Litigation – General – The Company is subject to legal proceedings, claims and litigation arising in the ordinary course of business. While the amounts claimed may be substantial, the ultimate liability cannot presently be determined because of considerable uncertainties that exist. Therefore, it is possible that the outcome of those legal proceedings, claims and litigation could adversely affect the Company's quarterly or annual operating results or cash flows when resolved in a future period. However, based on facts currently available, management believes that such matters will not materially and adversely affect the Company's financial position, results of operations or cash flows.

Litigation – Delta-T Corporation – On August 18, 2008, Delta-T Corporation filed suit in the United States District Court for the Eastern District of Virginia (the "First Virginia Federal Court case"), naming Pacific Ethanol, Inc. as a defendant, along with its former subsidiaries Pacific Ethanol Stockton, LLC, Pacific Ethanol Imperial, LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Magic Valley, LLC and Pacific Ethanol Madera, LLC. The suit alleged breaches of the parties' Engineering, Procurement and Technology License Agreements, breaches of a subsequent term sheet and letter agreement and breaches of indemnity obligations. The complaint sought specified contract damages of approximately $6,500,000, along with other unspecified damages. All of the defendants moved to dismiss the First Virginia Federal Court case for lack of personal jurisdiction and on the ground that all disputes between the parties must be resolved through binding arbitration, and, in the alternative, moved to stay the First Virginia Federal Court case pending arbitration. In January 2009, these motions were granted by the Court, compelling the case to arbitration with the American Arbitration Association (the "AAA"). By letter dated June 10, 2009, the AAA notified the parties to the arbitration that the matter was automatically stayed as a result of the Chapter 11 Filings.

On March 18, 2009, Delta-T Corporation filed a cross-complaint against Pacific Ethanol, Inc. and Pacific Ethanol Imperial, LLC in the Superior Court of the State of California in and for the County of Imperial. The cross-complaint arose out of a suit by OneSource Distributors, LLC against Delta-T Corporation. On March 31, 2009, Delta-T Corporation and Bateman Litwin N.V, a foreign corporation, filed a third-party complaint in the United States District Court for the District of Minnesota naming Pacific Ethanol, Inc. and Pacific Ethanol Imperial, LLC as defendants. The third-party complaint arose out of a suit by Campbell-Sevey, Inc. against Delta-T Corporation. On April 6, 2009, Delta-T Corporation filed a cross-complaint against Pacific Ethanol, Inc. and Pacific Ethanol Imperial, LLC in the Superior Court of the State of California in and for the County of Imperial. The cross-complaint arose out of a suit by GEA Westfalia Separator, Inc. against Delta-T Corporation. Each of these actions allegedly related to the aforementioned Engineering, Procurement and Technology License Agreements and Delta-T Corporation's performance of services thereunder. The third-party suit and the cross-complaints asserted many of the factual allegations in the First Virginia Federal Court case and sought unspecified damages.

On June 19, 2009, Delta-T Corporation filed suit in the United States District Court for the Eastern District of Virginia (the "Second Virginia Federal Court case"), naming Pacific Ethanol, Inc. as the sole defendant. The suit alleged breaches of the parties' Engineering, Procurement and Technology License Agreements, breaches of a subsequent term sheet and letter agreement, and breaches of indemnity obligations. The complaint sought specified contract damages of approximately $6,500,000, along with other unspecified damages.

In connection with the Chapter 11 Filings, the Plant Owners moved the Bankruptcy Court to enter a preliminary injunction in favor of the Plant Owners and Pacific Ethanol, Inc. staying and enjoining all of the aforementioned litigation and arbitration proceedings commenced by Delta-T Corporation. On August 6, 2009, the Bankruptcy Court ordered that the litigation and arbitration proceedings commenced by Delta-T Corporation be stayed and enjoined until September 21, 2009 or further order of the court, and that the Plant Owners, Pacific Ethanol, Inc. and Delta-T Corporation complete mediation by September 20, 2009 for purposes of settling all disputes between the parties. Following mediation, the parties reached an agreement under which a stipulated order was entered in the Bankruptcy Court on September 21, 2009, providing for a complete mutual release and settlement of any and all claims between Delta-T Corporation and the Plant Owners, a complete reservation of rights as between Pacific Ethanol, Inc. and Delta-T Corporation, and a stay of all proceedings by Delta-T Corporation against Pacific Ethanol, Inc. until December 31, 2009. As a result of the complete mutual release and settlement, the Company recorded a gain of approximately $2,008,000 in reorganization costs for the year ended December 31, 2009.

On March 1, 2010, Delta-T Corporation resumed active litigation of the Second Virginia Federal Court case by filing a motion for entry of a default judgment. Also on March 1, 2010, Pacific Ethanol, Inc. filed a motion for extension of time for its first appearance in the Second Virginia Federal Court case and also filed a motion to dismiss Delta-T Corporation's complaint based on the mandatory arbitration clause in the parties' contracts, and alternatively to stay proceedings during the pendency of arbitration. These motions were argued on March 31, 2010. The Court ruled on the motions in May 2010, denying Delta-T Corporation's motion for entry of a default judgment, and compelling the case to arbitration with the AAA.

On May 25, 2010, Delta-T Corporation filed a Voluntary Petition in the Bankruptcy Court for the Eastern District of Virginia under Chapter 7 of the Bankruptcy Code. The Company believes that Delta-T Corporation has liquidated its assets and abandoned its claims against the Company.

Litigation – Barry Spiegel – State Court Action – On December 22, 2005, Barry J. Spiegel, a former shareholder and director of Accessity, filed a complaint in the Circuit Court of the 17th Judicial District in and for Broward County, Florida (Case No. 05018512), or the State Court Action, against Barry Siegel, Philip Kart, Kenneth Friedman and Bruce Udell, or collectively, the Individual Defendants. Messrs. Udell and Friedman are former directors of Accessity and Pacific Ethanol. Mr. Kart is a former executive officer of Accessity and Pacific Ethanol. Mr. Siegel is a former director and former executive officer of Accessity and Pacific Ethanol.

The State Court Action relates to the Share Exchange Transaction and purports to state the following five counts against the Individual Defendants: (i) breach of fiduciary duty, (ii) violation of the Florida Deceptive and Unfair Trade Practices Act, (iii) conspiracy to defraud, (iv) fraud, and (v) violation of Florida's Securities and Investor Protection Act. Mr. Spiegel based his claims on allegations that the actions of the Individual Defendants in approving the Share Exchange Transaction caused the value of his Accessity common stock to diminish and is seeking approximately $22.0 million in damages. On March 8, 2006, the Individual Defendants filed a motion to dismiss the State Court Action. Mr. Spiegel filed his response in opposition on May 30, 2006. The court granted the motion to dismiss by Order dated December 1, 2006, on the grounds that, among other things, Mr. Spiegel failed to bring his claims as a derivative action.

On February 9, 2007, Mr. Spiegel filed an amended complaint which purports to state the following five counts: (i) breach of fiduciary duty, (ii) fraudulent inducement, (iii) violation of Florida's Securities and Investor Protection Act, (iv) fraudulent concealment, and (v) breach of fiduciary duty of disclosure. The amended complaint included Pacific Ethanol as a defendant. On March 30, 2007, Pacific Ethanol filed a motion to dismiss the amended complaint. Before the court could decide that motion, on June 4, 2007, Mr. Spiegel amended his complaint, which purports to state two counts: (a) breach of fiduciary duty, and (b) fraudulent inducement. The first count is alleged against the Individual Defendants and the second count is alleged against the Individual Defendants and Pacific Ethanol. The amended complaint was, however, voluntarily dismissed on August 27, 2007, by Mr. Spiegel as to Pacific Ethanol.

Mr. Spiegel sought and obtained leave to file another amended complaint on June 25, 2009, which renewed his case against Pacific Ethanol, and named three additional individual defendants, and asserted the following three counts: (x) breach of fiduciary duty, (y) fraudulent inducement, and (z) aiding and abetting breach of fiduciary duty. The first two counts are alleged solely against the Individual Defendants. With respect to the third count, Mr. Spiegel has named Pacific Ethanol California, Inc. (formerly known as Pacific Ethanol, Inc.), as well as William L. Jones, Neil M. Koehler and Ryan W. Turner. Messrs. Jones and Turner are directors of Pacific Ethanol. Mr. Turner is a former officer of Pacific Ethanol. Mr. Koehler is a director and officer of Pacific Ethanol. Pacific Ethanol and the Individual Defendants filed a motion to dismiss the count against them, and the court granted the motion. Plaintiff then filed another amended complaint, and Defendants once again moved to dismiss. The motion was heard on February 17, 2010, and the court, on March 22, 2010, denied the motion requiring Pacific Ethanol and Messrs. Jones, Koehler and Turner to answer the complaint and respond to discovery requests.

Litigation – Barry Spiegel – Federal Court Action – On December 28, 2006, Barry J. Spiegel, filed a complaint in the United States District Court, Southern District of Florida (Case No. 06-61848), or the Federal Court Action, against the Individual Defendants and Pacific Ethanol. The Federal Court Action relates to the Share Exchange Transaction and purports to state the following three counts: (i) violations of Section 14(a) of the Securities Exchange Act of 1934, as amended, or Exchange Act, and SEC Rule 14a-9 promulgated thereunder, (ii) violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and (iii) violation of Section 20(A) of the Exchange Act. The first two counts are alleged against the Individual Defendants and Pacific Ethanol and the third count is alleged solely against the Individual Defendants. Mr. Spiegel bases his claims on, among other things, allegations that the actions of the Individual Defendants and Pacific Ethanol in connection with the Share Exchange Transaction resulted in a share exchange ratio that was unfair and resulted in the preparation of a proxy statement seeking shareholder approval of the Share Exchange Transaction that contained material misrepresentations and omissions. Mr. Spiegel is seeking in excess of $15.0 million in damages.

Mr. Spiegel amended the Federal Court Action on March 5, 2007, and Pacific Ethanol and the Individual Defendants filed a Motion to Dismiss the amended pleading on April 23, 2007. Plaintiff Spiegel sought to stay his own federal case, but the Motion was denied on July 17, 2007. The court required Mr. Spiegel to respond to the Company's Motion to Dismiss. On January 15, 2008, the court rendered an Order dismissing the claims under Section 14(a) of the Exchange Act on the basis that they were time barred and that more facts were needed for the claims under Section 10(b) of the Exchange Act. The court, however, stayed the entire case pending resolution of the State Court Action.

13. FAIR VALUE MEASUREMENTS.

The fair value hierarchy prioritizes the inputs used in valuation techniques into three levels as follows:

- Level 1 – Observable inputs – unadjusted quoted prices in active markets for identical assets and liabilities;
- Level 2 – Observable inputs other than quoted prices included in Level 1 that are observable for the asset or liability through corroboration with market data; and
- Level 3 – Unobservable inputs – includes amounts derived from valuation models where one or more significant inputs are unobservable. For fair value measurements using significant unobservable inputs, a description of the inputs and the information used to develop the inputs is required along with a reconciliation of Level 3 values from the prior reporting period.

Convertible Notes and Warrants – As discussed in Notes 6 and 10, the Company recorded the Convertible Notes and Warrants at fair value and designated them as Level 3 on their issuance date.

The Convertible Notes were valued using a combination of a Monte Carlo Binomial Lattice-Based valuation methodology for the embedded conversion feature, adjusted for marketability restrictions, combined with a discounted cash flow model for the payment stream of the debt instrument. Significant assumptions used in the valuation at both the issuance date and December 31, 2010 are as follows:

Assumptions	**October 6, 2010**	**December 31, 2010**
Conversion price	$0.85	$0.85
Volatility	73.7%	68.4%
Risk free interest rate	0.24%	0.29%
Term (years)	1.27	1.03
Marketability discount	32.0%	27.0%
Discount rate on plain debt	30.0%	30.0%

Based on the above, the Company estimated the fair value of the Convertible Notes to be $37,474,000 at October 6, 2010 and $38,108,000 at December 31, 2010.

The Warrants were valued using a Monte Carlo Binomial Lattice-Based valuation methodology, adjusted for marketability restrictions. Significant assumptions used in the valuations at both the issuance date and December 31, 2010 are as follows:

Assumptions	**October 6, 2010**	**December 31, 2010**
Strike price	$0.85	$0.85
Volatility	67.0%	63.5%
Risk free interest rate	1.77%	2.71%
Term (years)	7.00	6.90
Marketability discount	50.4%	44.4%

Based on the above, the Company estimated the fair value of the Warrants to be $7,445,000 at October 6, 2010 and $5,718,000 at December 31, 2010.

Interest Rate Caps and Swaps – Prior to the Effective Date, the Company classified the Plant Owners' interest rate caps and swaps into the following levels depending on the inputs used to determine their fair values. The fair value of the interest rate caps were designated as Level 2 based on quoted prices on similar assets or liabilities in active markets. The fair values of the interest rate swaps were designated as Level 3 and were based on a combination of observable inputs and material unobservable inputs.

The Plant Owners had five pay-fixed-and-receive variable interest rate swaps in liability positions which were extinguished as part of the emergence from bankruptcy. The value of these swaps was materially affected by the Plant Owners' credit. A pre-credit fair value of each swap was determined using conventional present value discounting based on the 3-year Euro dollar futures curves and the LIBOR swap curve beyond 3 years, resulting in a liability of approximately $4,070,000 and $7,189,000 at June 29, 2010 and December 31, 2009, respectively. To reflect the Plant Owners' financial condition and Chapter 11 Filings, a recovery rate of 40% was applied to that value. Management elected the 40% recovery rate in the absence of any other company-specific information. As the recovery rate is a material unobservable input, these swaps were considered Level 3. It is the Company's understanding that a 40% recovery rate reflects the standard market recovery rate provided by Bloomberg in probability of default calculations. The Company applied its interpretation of the 40% recovery rate to the swap liability, reducing the liability by 60% to approximately $1,628,000 and $2,875,000 at June 29, 2010 and December 31, 2009, respectively, to reflect the credit risk to counterparties. On June 29, 2010, the liability balance was removed from the Company's consolidated financial statements as discussed in Note 7.

Other Derivative Instruments – The Company's other derivative instruments consist of commodity positions and other interest rate caps and swaps. The fair value of the commodity positions are based on quoted prices on the commodity exchanges and are designated as Level 1; the fair value of the interest rate caps and certain swaps are based on quoted prices on similar assets or liabilities in active markets and discounts to reflect potential credit risk to lenders and are designated as Level 2; and certain interest rate swaps are based on a combination of observable inputs and material unobservable inputs.

The following table summarizes fair value measurements by level at December 31, 2010 (in thousands):

	Level 1	Level 2	Level 3	Total
Assets:				
Interest rate caps	—	—	—	—
Total Assets	$ —	$ —	$ —	$ —
Liabilities:				
Convertible notes	$ —	$ —	$ 38,108	$ 38,108
Warrants(1)	—	—	5,718	5,718
Commodity contracts	15	—	—	15
Total Liabilities	$ 15	$ —	$ 43,826	$ 43,841

(1) Included in other liabilities in the consolidated balance sheets.

The following table summarizes fair value measurements by level at December 31, 2009 (in thousands):

	Level 1	Level 2	Level 3	Total
Assets:				
Interest rate caps	$ —	$ 21	$ —	$ 21
Total Assets	$ —	$ 21	$ —	$ 21
Liabilities:				
Interest rate caps and swaps	$ —	$ 971	$ 2,875	$ 3,846
Total Liabilities	$ —	$ 971	$ 2,875	$ 3,846

For fair value measurements using significant unobservable inputs (Level 3), a description of the inputs and the information used to develop the inputs is required along with a reconciliation of Level 3 values from the prior reporting period. The changes in the Company's fair value of its Level 3 inputs are as follows (in thousands):

	Convertible Notes	Warrants	Interest Rate Swaps
Balance, December 31, 2008	$ —	$ —	$ (5,245)
Adjustments to fair value for the period	—	—	2,370
Balance, December 31, 2009	—	—	(2,875)
Issuance of convertible notes and warrants	37,474	7,445	—
Adjustments to fair value for the period	634	(1,727)	1,247
Gain recognized in bankruptcy exit	—	—	1,628
Balance, December 31, 2010	$ 38,108	$ 5,718	—

Reconciliation of Impact to Statements of Operations – The following reconciliation summarizes the initial amounts recognized for the issuance of the Convertible Notes and Warrants and subsequent amounts that are recorded in the statements of operations as fair value adjustments to the Convertible Notes and Warrants (in thousands):

	Balance Sheet		Statements of Operations
	Convertible Notes	Warrants	Fair Value Gain (Loss)
Issuance of $35.0 million on October 6, 2010	$ 37,474	$ 7,445	$ (9,919)
Write off of issuance costs	—	—	(2,910)
Adjustments to fair value for the period	634	(1,727)	1,093
Ending balance, December 31, 2010	$ 38,108	$ 5,718	$ (11,736)

14. RELATED PARTY TRANSACTIONS.

The Company had accrued and unpaid dividends in respect of its Series B Preferred Stock of $6,050,000 and $3,202,000 as of December 31, 2010 and 2009, respectively.

The Company had notes payable to its Chairman of the Board and its Chief Executive Officer totaling $1,250,000 and $2,000,000 and accrued and unpaid interest in respect of these notes of $0 and $120,000 as of December 31, 2010 and 2009, respectively. On October 29, 2010, the Company paid all accrued interest and $750,000 in principal under these notes. On November 5, 2010, the Company entered into amendments to these notes, extending the maturity date to March 31, 2012.

The Company had notes payable to Lyles in the aggregate principal amount of $31,500,000 and accrued and unpaid interest and fees in respect of these notes of $2,731,000 as of December 31, 2009. On October 6, 2010, the Company paid in full all amounts owed under its notes payable to Lyles, consisting of $12,500,000 in principal and $4,537,000 in accrued interest and fees.

In May 2009, the Company entered into a consulting agreement with Ryan W. Turner, who is the son-in-law of the Company's Chairman of the Board, at $10,000 per month for consulting services relating to the Company's restructuring efforts. In November 2009, the Company executed a new consulting agreement with Mr. Turner at $20,000 per month for similar consulting services. The Company paid Mr. Turner an aggregate of $23,100 and $86,500 for the years ended December 31, 2010 and 2009, respectively, under these arrangements. As of December 31, 2010 and 2009, the Company had no outstanding accounts payable to Mr. Turner. The Company's consulting relationship with Mr. Turner was terminated in connection with his appointment to the Company's Board of Directors in February 2010.

15. PLANT OWNERS' CONDENSED COMBINED FINANCIAL STATEMENTS

Since the consolidated financial statements of the Company include entities other than the Plant Owners, below are the condensed combined financial statements of the Plant Owners for the periods included in these consolidated financial statements during the pendency of their Chapter 11 Filings. These condensed combined financial statements have been prepared, in all material respects, on the same basis as the consolidated financial statements of the Company. The condensed combined financial statements of the Plant Owners during the pendency of their Chapter 11 Filings are as follows (unaudited, in thousands):

PACIFIC ETHANOL HOLDING CO. LLC AND SUBSIDIARIES
CONDENSED COMBINED BALANCE SHEET
As of December 31, 2009

ASSETS		
Current Assets:		
Cash and cash equivalents	$	3,246
Accounts receivable trade		716
Accounts receivable related parties		2,371
Inventories		7,789
Prepaid expenses		1,131
Other current assets		1,029
Total current assets		16,282
Property and equipment, net		160,000
Other assets		858
Total Assets	$	177,140
LIABILITIES AND MEMBER'S DEFICIT		
Current Liabilities:		
Accounts payable – trade	$	2,219
Accrued liabilities		174
Other liabilities – related parties		36
DIP financing and rollup		39,654
Other current liabilities		1,504
Total current liabilities		43,587
Other liabilities		61
Liabilities subject to compromise		242,417
Total Liabilities		286,065
Member's Deficit:		
Member's equity		257,487
Accumulated deficit		(366,412)
Total Member's Deficit		(108,925)
Total Liabilities and Member's Deficit	$	177,140

PACIFIC ETHANOL HOLDING CO. LLC AND SUBSIDIARIES
CONDENSED COMBINED STATEMENTS OF OPERATIONS

	January 1, 2010 to June 29, 2010	May 17, 2009 to December 31, 2009
Net sales	$ 89,737	$ 50,448
Cost of goods sold	98,140	66,470
Gross loss	(8,403)	(16,022)
Selling, general and administrative expenses	1,829	2,420
Asset impairments	—	247,657
Loss from operations	(10,232)	(266,099)
Other expense, net	(1,253)	(267)
Loss before reorganization costs and gain from bankruptcy exit	(11,485)	(266,366)
Reorganization costs	(4,153)	(11,607)
Gain from bankruptcy exit	119,408	—
Net income (loss)	$ 103,770	$ (277,973)

PACIFIC ETHANOL HOLDING CO. LLC AND SUBSIDIARIES
CONDENSED COMBINED STATEMENTS OF CASH FLOWS

	January 1, 2010 to June 29, 2010	May 17, 2009 to December 31, 2009
Operating Activities:		
Net income (loss)	$ 103,770	$ (277,973)
Adjustments to reconcile net income (loss) to cash used in operating activities:		
Non-cash reorganization costs:		
Gain on bankruptcy exit	(119,408)	—
Write-off of unamortized deferred financing fees	—	7,545
Settlement of accrued liability	—	(2,008)
Asset impairments	—	247,657
Depreciation and amortization of intangibles	5,064	16,042
Gain on derivative instruments	(1,206)	(1,572)
Amortization of deferred financing costs	85	61
Changes in operating assets and liabilities:		
Accounts receivable	(5,059)	(103)
Inventories	2,948	(5,016)
Prepaid expenses and other assets	159	(378)
Accounts payable and accrued expenses	6,839	(442)
Net cash used in operating activities	$ (6,808)	$ (16,187)
Investing Activities:		
Additions to property and equipment	$ (310)	$ (446)
Net cash impact of bankruptcy exit	(1,301)	—
Net cash used in investing activities	$ (1,611)	$ (446)
Financing Activities:		
Proceeds from borrowings under DIP financing	$ 5,173	$ 19,827
Net cash provided by financing activities	$ 5,173	$ 19,827
Net increase (decrease) in cash and cash equivalents	(3,246)	3,194
Cash and cash equivalents at beginning of period	3,246	52
Cash and cash equivalents at end of period	$ —	$ 3,246

16. SUBSEQUENT EVENTS.

Initial Note and Initial Warrant Exchange – On January 7, 2011, under the terms of exchange agreements with the holders of the Initial Notes and Initial Warrants, the Company issued $35,000,000 in principal amount of Convertible Notes in exchange for the Initial Notes and issued Warrants to purchase an aggregate of 20,588,235 shares of the Company's common stock in exchange for the Initial Warrants.

Amendment and Waiver to Convertible Notes and Warrants – On March 24, 2011, the Company entered into a separate Amendment and Waiver Agreement with each of the Convertible Note investors (collectively, the "Waiver Agreements"). Under the terms of the Waiver Agreements, (i) the date the Company is required to deliver the Company's installment notice with respect to the May 2, 2011 installment date was changed from March 31, 2011 to March 24, 2011 and (ii) the date the Company is required to deliver the pre-installment shares with respect to the May 2, 2011 installment date was changed from April 4, 2011 to March 25, 2011. Under the terms of the Waiver Agreements, each of the Convertible Note investors also waived an equity conditions failure under the Convertible Notes that may be triggered by the filing of the Company's Annual Report on Form 10-K for the year ended December 31, 2010. Additionally, the Registration Rights Agreement was amended to include the period consisting of the trading days beginning and including the date of the filing of the Company's Annual Report on Form 10-K for the year ended December 31, 2010.

Convertible Note Payments – From January 1, 2011, through March 31, 2011, the Company issued 14,898,700 shares of its common stock in connection with its Convertible Notes.

Series B Conversion – From January 1, 2011, through March 31, 2011, 528,982 shares of the Company's Series B Preferred Stock were converted into 3,105,123 shares of the Company's common stock.

INDEX TO EXHIBITS

Exhibit Number	Description	Where Located Form	File Number	Exhibit Number	Filing Date	Filed Herewith
2.1	Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code as filed with the United States Bankruptcy Court for the District of Delaware on April 16, 2010	8-K	000-21467	2.1	06/11/2010	
2.2	Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code as entered by the United States Bankruptcy Court for the District of Delaware on June 8, 2010	8-K	000-21467	99.1	06/11/2010	
2.3	Call Option Agreement dated June 29, 2010 between the Registrant, New PE Holdco LLC and certain Members	8-K	000-21467	10.1	07/06/2010	
2.4	Agreement for Purchase and Sale of Units in New PE Holdco LLC dated September 28, 2010 between the Registrant and CS Candlewood Special Situations Fund, L.P.	8-K	000-21467	10.5	09/28/2010	
2.5	Membership Interest Purchase Agreement dated September 27, 2010, between Pacific Ethanol California, Inc. and Daniel A. Sanders	8-K	000-21467	10.6	09/28/2010	
3.1	Certificate of Incorporation	8-K	000-21467	3.1	03/29/2005	
3.2	Certificate of Amendment to Certificate of Incorporation	10-Q	000-21467	3.4	08/16/2010	
3.3	Certificate of Designations, Powers, Preferences and Rights of the Series A Cumulative Redeemable Convertible Preferred Stock	10-KSB	000-21467	3.2	04/14/2006	
3.4	Certificate of Designations, Powers, Preferences and Rights of the Series B Cumulative Convertible Preferred Stock	8-K	000-21467	10.2	03/27/2008	
3.5	Bylaws of the Registrant	8-K	000-21467	3.2	03/29/2005	
10.1	2004 Stock Option Plan*	S-8	333-123538	4.1	03/24/2005	
10.2	Amended 1995 Incentive Stock Plan*	10-KSB	000-21467	10.7	03/31/2003	
10.3	First Amendment to 2004 Stock Option Plan*	8-K	000-21467	10.3	02/01/2006	
10.4	2006 Stock Incentive Plan, as amended*	S-8	333-169002	4.1	08/23/2010	
10.5	Form of Employee Restricted Stock Agreement*	8-K	000-21467	10.2	10/10/2006	
10.6	Form of Non-Employee Director Restricted Stock Agreement*	8-K	000-21467	10.3	10/10/2006	
10.7	Amended and Restated Executive Employment Agreement dated December 11, 2007 between the Registrant and Neil M. Koehler*	8-K	000-21467	10.3	12/17/2007	
10.8	Amended and Restated Executive Employment Agreement dated December 11, 2007 between the Registrant and Christopher W. Wright*	8-K	000-21467	10.5	12/17/2007	

Exhibit Number	Description	Where Located Form	File Number	Exhibit Number	Filing Date	Filed Herewith
10.9	Amended and Restated Executive Employment Agreement dated November 25, 2009 between the Registrant and Bryon T. McGregor*	8-K	000-21467	10.1	11/27/2009	
10.10	Form of Indemnity Agreement between the Registrant and each of its Executive Officers and Directors*	10-K	000-21467	10.46	03/31/2010	
10.11	Promissory Note dated March 30, 2009 by the Registrant in favor of William L. Jones*	8-K	000-21467	10.5	04/02/2009	
10.12	Promissory Note dated March 30, 2009 by the Registrant in favor of Neil M. Koehler*	8-K	000-21467	10.6	04/02/2009	
10.13	Amended and Restated Ethanol Purchase and Sale Agreement dated August 9, 2006 between Kinergy Marketing, LLC and Front Range Energy, LLC	8-K	000-21467	10.1	08/15/2006	
10.14	Amendment to Amended and Restated Ethanol Purchase and Sale Agreement dated October 17, 2006 between Kinergy Marketing, LLC and Front Range Energy, LLC	8-K	000-21467	10.7	10/23/2006	
10.15	Warrant dated March 27, 2008 issued by the Registrant to Lyles United, LLC	8-K	000-21467	10.3	03/27/2008	
10.16	Registration Rights Agreement dated March 27, 2008 between the Registrant and Lyles United, LLC	8-K	000-21467	10.4	03/27/2008	
10.17	Letter Agreement dated March 27, 2008 between the Registrant and Lyles United, LLC	8-K	000-21467	10.5	03/27/2008	
10.18	Form of Warrant dated May 22, 2008 issued by the Registrant	8-K	000-21467	10.2	05/23/2008	
10.19	Letter Agreement dated May 22, 2008 among the Registrant, Neil M. Koehler, Bill Jones, Paul P. Koehler and Thomas D. Koehler*	8-K	000-21467	10.3	05/23/2008	
10.20	Form of Warrant to purchase shares of the Registrant’s common stock	8-K	000-21467	10.5	05/23/2008	
10.21	Loan and Security Agreement dated July 28, 2008 among Kinergy Marketing LLC, the parties thereto from time to time as Lenders and Wachovia Capital Finance Corporation (Western)	8-K	000-21467	10.1	08/01/2008	
10.22	Guarantee dated July 28, 2008 by the Registrant in favor of Wachovia Capital Finance Corporation (Western) for and on behalf of Lenders	8-K	000-21467	10.2	08/01/2008	
10.23	Amendment and Waiver Agreement dated May 17, 2009 among the Registrant, Kinergy Marketing, LLC and Wachovia Capital Finance Corporation (Western)	8-K	000-21467	10.1	05/18/2009	
10.24	Amendment No. 2 to Loan and Security Agreement dated November 5, 2009 among the Registrant, Kinergy Marketing, LLC and Wachovia Capital Finance Corporation (Western)	10-Q	000-21467	10.3	11/09/2009	
10.25	Amendment No. 3 to Loan and Security Agreement dated September 22, 2010 among the Registrant, Kinergy Marketing LLC and Wells Fargo Capital Finance, LLC	8-K	000-21467	10.1	09/22/2010	

Exhibit Number	Description	Where Located Form	File Number	Exhibit Number	Filing Date	Filed Herewith
10.26	Amendment No. 4 to Loan and Security Agreement dated October 27, 2010 among the Registrant, Kinergy Marketing LLC and Wells Fargo Capital Finance, LLC	8-K	000-21467	10.1	10/27/2010	
10.27	Amendment No. 5 to Loan and Security Agreement dated October 27, 2010 among the Registrant, Kinergy Marketing LLC and Wells Fargo Capital Finance, LLC	8-K	000-21467	10.1	12/15/2010	
10.28	Asset Management Agreement dated June 29, 2010 among the Registrant, Pacific Ethanol Holding Co. LLC, Pacific Ethanol Madera LLC, Pacific Ethanol Columbia, LLC, Pacific Ethanol Stockton, LLC and Pacific Ethanol Magic Valley, LLC	8-K	000-21467	10.2	07/06/2010	
10.29	Form of Ethanol Marketing Agreement	8-K	000-21467	10.3	07/06/2010	
10.30	Form of Corn Procurement and Handling Agreement	8-K	000-21467	10.4	07/06/2010	
10.31	Form of Distillers Grains Marketing Agreement	8-K	000-21467	10.5	07/06/2010	
10.32	Securities Purchase Agreement dated September 27, 2010 among the Registrant and the Investors	8-K	000-21467	10.1	09/28/2010	
10.33	Form of Registration Rights Agreement among the Registrant and the Investors	8-K	000-21467	10.4	09/28/2010	
10.34	Limited Liability Company Agreement of New PE Holdco LLC					X
10.35	Form of Amendment and Exchange Agreement	8-K	000-21467	10.1	01/07/2011	
10.36	Form of Senior Convertible Note	8-K	000-21467	10.2	01/07/2011	
10.37	Form of Warrant	8-K	000-21467	10.3	01/07/2011	
10.38	Form of Amendment and Waiver Agreement	8-K	000-21467	10.1	03/25/2011	
21.1	Subsidiaries of the Registrant					X
23.1	Consent of Independent Registered Public Accounting Firm					X
31.1	Certification Required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.2	Certification Required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.1	Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X

(*) A contract, compensatory plan or arrangement to which a director or executive officer is a party or in which one or more directors or executive officers are eligible to participate.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on this 31st day of March, 2011.

PACIFIC ETHANOL, INC.

/s/ NEIL M. KOEHLER
Neil M. Koehler
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report 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/ WILLIAM L. JONES William L. Jones	Chairman of the Board and Director	March 31, 2011
/s/ NEIL M. KOEHLER Neil M. Koehler	President, Chief Executive Officer (Principal Executive Officer) and Director	March 31, 2011
/s/ BRYON T. MCGREGOR Bryon T. McGregor	Chief Financial Officer (Principal Financial and Accounting Officer)	March 31, 2011
/s/ TERRY L. STONE Terry L. Stone	Director	March 31, 2011
/s/ JOHN L. PRINCE John L. Prince	Director	March 31, 2011
/s/ DOUGLAS L. KIETA Douglas L. Kieta	Director	March 31, 2011
/s/ LARRY D. LAYNE Larry D. Layne	Director	March 31, 2011
/s/ MICHAEL D. KANDRIS Michael D. Kandris	Director	March 31, 2011
/s/ RYAN W. TURNER Ryan W. Turner	Director	March 31, 2011

EXHIBITS FILED WITH THIS REPORT

Exhibit Number	Description
10.34	Limited Liability Company Agreement of New PE Holdco
21.1	Subsidiaries of the Registrant
23.1	Consent of Independent Registered Public Accounting Firm
31.1	Certification Required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification Required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
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Exhibit 10.34

LIMITED LIABILITY COMPANY AGREEMENT

OF

NEW PE HOLDCO LLC

DATE: JUNE 29, 2010

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LIMITED LIABILITY COMPANY AGREEMENT
OF NEW PE HOLDCO LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT of NEW PE HOLDCO LLC (the "**Company**") is entered into and shall be effective as of the 29th day of June 2010 (the "**Effective Date**"), and is made by and among the entities listed on Appendix II to this Agreement (as such Appendix may be amended and/or restated from time to time), and each other person who becomes a Member by executing a joinder agreement in the form of Exhibit A hereto. All capitalized terms not otherwise defined herein have the meaning set forth for such terms in Appendix I hereto.

RECITALS

WHEREAS, the Company was formed under the Act pursuant to a Certificate of Formation filed with the Secretary of State of the State of Delaware on June 9, 2010 and pursuant to that certain Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated April 16, 2010, filed by the predecessors in interest to PEH and the Plant LLCs with the United States Bankruptcy Court for the District of Delaware (the "**Reorganization Plan**");

WHEREAS, the Company will indirectly own, through Pacific Ethanol Holding Co. LLC (its wholly-owned subsidiary, "**PEH**"), certain ethanol production facilities (the "**Plants**") held by Pacific Ethanol Madera LLC ("**PE Madera**"), Pacific Ethanol Columbia, LLC ("**PE Boardman**"), Pacific Ethanol Stockton LLC ("**PE Stockton**") and Pacific Ethanol Magic Valley, LLC ("**PE Magic Valley**", collectively with PE Madera, PE Boardman and PE Stockton, the "**Plant LLCs**" and each a "**Plant LLC**") and located in Madera, California, Boardman, Oregon, Burley, Idaho, and Stockton, California, respectively.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Members, intending to be legally bound, hereby agree as follows:

SECTION 1
THE COMPANY

1.1 Formation; Limited Liability Company Agreement; Authorized Person.

(a) The Members have formed the Company as a limited liability company under and pursuant to the provisions hereof and of the Act. The fact that the Certificate is on file with the Secretary of State of the State of Delaware shall constitute notice that the Company is a limited liability company. Upon the execution hereof, each of the Persons named on the signature pages hereto shall be considered admitted to the Company as a Member and each such Member, by its execution and delivery of this Agreement, agrees to be bound by the terms and conditions hereof. The rights and liabilities of the Members shall be as provided under the Act, the Certificate and this Agreement (b)The Members acknowledge and agree that Ludwell Strickler was and is an “authorized person” within the meaning of the Act, and has executed, delivered and filed the Certificate with the Secretary of State of the State of Delaware. As of the Effective Date, his powers as an “authorized person” ceased, and the Board thereupon became the designated “authorized person” and shall continue as the designated “authorized person” (reserving the right, pursuant to the terms hereof, to designate other “authorized persons”) within the meaning of the Act. The Board, or its duly appointed designee, shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

1.2 Name.

The name of the Company shall be “New PE Holdco LLC” and all business of the Company shall be conducted in such name or such name or assumed names as the Board deems necessary or appropriate to comply with the requirements of any other jurisdiction in which the Company may be required to, or may elect to, be qualified. The Board may change the name of the Company upon ten (10) Business Days’ notice to the Members.

1.3 Purpose; Powers.

(a) The purposes of the Company are to (i) own the equity interests of PEH and, indirectly, the Plant LLCs and (ii) engage in such additional activities related or incidental to the purposes set forth in clause (i) as permitted in accordance with the terms of this Agreement (the “**Business**”).

(b) The Company has the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or in furtherance of the purposes of the Company set forth in Section 1.3(a).

(c) The Company is hereby authorized to (i) execute, deliver and perform, and any Manager and the Chief Operating Officer, in each case on behalf of the Company, are hereby authorized to execute and deliver the (1) Pledge and Security Agreement, dated on or about the date hereof, among the Company, PEH, and the collateral agent under the Credit Agreement and (2) the Call Option Agreement and all documents, agreements, certificates, or financing statements contemplated by, or related to, any of the foregoing, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement and (ii) cause (1) PEH and each of the Plant LLCs to enter into the Credit Agreement and all Financing Documents, Project Documents (as each such term is defined in the Credit Agreement) and other documents referred to therein to which any of PEH or any Plant LLC is a party and (2) cause PEH to pledge the equity interest in the Plant LLCs as contemplated by the Credit Agreement. The foregoing authorization shall not be deemed a restriction on the powers of the Board to enter into other agreements on behalf of the Company.

1.4 Registered Office.

The Company’s registered office, and the name and address of its registered agent, in the State of Delaware initially are located at the address set forth in the Certificate. The Company may change its registered office to such location within the State of Delaware as may from time to time be determined by the Board.

1.5 Term.

The term of the Company commenced on the date the Certificate was filed in the office of the Secretary of State of the State of Delaware in accordance with the Act and shall continue perpetually until the winding up and liquidation of the Company and its business is completed following a Dissolution Event, as provided in SECTION 11.

1.6 Title to Property.

All Property owned by the Company shall be owned by the Company as an entity and no Member shall have any ownership interest in such Property in its individual name, and each Member's interest in the Company shall be personal property for all purposes. At all times after the Effective Date, the Company shall hold title to all of its Property in the name of the Company and not in the name of any Member.

1.7 Payments of Individual Obligations.

The Company's Property, credit and other assets shall be used solely for the benefit of the Company, and no asset of the Company shall be Transferred or encumbered for, or in payment of, any individual obligation of any Member.

SECTION 2
UNITS, ADMISSION OF MEMBERS AND CAPITAL CONTRIBUTIONS

2.1 Units.

(a) The limited liability company interests in the Company shall consist of one class of limited liability company interests, denominated as "**Units**". Each owner of one or more of Units shall be referred to herein as a Member. The Units represent limited liability company interests in the Company issued pursuant to the Act, representing a Capital Contribution, and any and all benefits to which a holder of such an interest may be entitled to under this Agreement or the Act, together with all obligations of such holder to comply with the terms and provisions of this Agreement and the Act.

(b) The Units shall be entitled to one vote per Unit on all matters for which the holders of Units are entitled to vote under the terms of this Agreement and the Act. The Units shall have the rights, preferences and privileges set forth herein. One-thousand (1,000) Units shall be outstanding as of the Effective Date.

(c) Other than in connection with additional Capital Contributions as contemplated by Section 2.3(b), and pursuant thereto and to Sections 5.6(b)(ix) and (x), no additional Units shall be issued.

2.2 Admission of Members.

Additional Persons (other than those admitted as Members as of the Effective Date) shall be admitted to the Company as a Member on the date that all of the following conditions have been satisfied: such Person has (a) paid any required contribution, (b) been accepted by the Board as a Member and (c) executed a Joinder Agreement.

2.3 Capital Contributions.

(a) Original Capital Contributions. In respect of the Capital Contributions that have been made by the Members as of the Effective Date (the "**Original Capital Contributions**"), the Members have received the Units and have the initial capital accounts set forth in Appendix II hereto.

(b)Subsequent Capital Contributions. No Member shall be required to make any additional Capital Contribution without such Member's written consent. However, with the consent of a majority of the Board and of Members holding at least eighty-five (85%) (a "**Supersupermajority**") of the then outstanding Units, the Company may request that the Members make an additional Capital Contribution pro rata in accordance with their respective holdings of the Units; *provided* that without its written consent, no Member shall be diluted, by virtue of not participating in such additional Capital Contribution, by more than a one-to-one ratio for every dollar not so contributed. Any solicitation of the Members' consent in respect of an additional Capital Contribution shall include disclosure of the proposed terms, including a description of the dilutive effects, if any, of such Capital Contribution.

2.4 Unit Transfers.

Appendix II shall be updated upon the issuance of any new Units as permitted by this Agreement and upon Transfer of any Units pursuant to and in accordance with this Agreement. An amendment to Appendix II to reflect the aforesaid may be executed by any Manager or the Chief Operating Officer of the Company.

2.5 Register and Certification of Limited Liability Company Interests.

(a) The Company shall maintain a register indicating: (i) with respect to each issuance of Units, the date of such issuance, the number of Units issued and the Member to whom such Units were issued and (ii) with respect to each Transfer of Units permitted by the terms of this Agreement, the date of such Transfer, the number of Units transferred and the identity of each of the transferor and the transferee(s) of such Units.

(b) Unless the Board determines otherwise, the Company will not issue certificates representing the Units. However, if the Units are evidenced by a certificate (the form of certificate for Units attached hereto as Exhibit B, a "**Unit Certificate**"), such Unit Certificate shall be executed on behalf of the Company by a Manager or the Chief Operating Officer of the Company. Unit Certificates bearing the signatures of Persons who were, at the time when such signatures shall have been affixed, authorized to sign such Unit Certificates on behalf of the Company shall be validly issued and entitled to the benefits of this Agreement, notwithstanding that such Persons or any of them shall have ceased to be so authorized prior to the delivery of such Unit Certificates or did not have such authority at the date of delivery of such Unit Certificates.

(c) The Units shall have no preemptive or similar rights (except as provided herein) and, when issued to the Members against payment of the applicable Capital Contribution, will be fully paid and non-assessable by the Company.

2.6 Record Holders. Except as may otherwise be required by law, the Company shall be entitled to treat the record holder of Units as shown on its books as the owner of such Units for all purposes, including the payment of distribution and the right to vote, if any, with respect thereto, regardless of any Transfer, pledge or other disposition of such Units, and shall incur no liability for distributions of cash or other property made in good faith to such record holder until such Units have been transferred on the books of the Company in accordance with the requirements of and in compliance with Section 9 of this Agreement. It shall be the duty of each Member to notify the Company of any change of address or contact information of such Member from that set forth on such Member's signature page hereto.

2.7 Record Date. In order that the Company may determine the Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or to express consent to an action of the Company in writing without a meeting, or entitled to receive payment of any allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of Units or for the purpose of any other lawful action, the Board may fix, in advance, a record date (the "**Record Date**"), which shall not be more than sixty (60) days, nor less, in the case of a meeting of Members, ten (10) days, before the date of such meeting or, in the case of any other action for which a record date may be fixed, two (2) days before the date of the taking of such other action. In such case only Members of record on such Record Date shall be entitled to notice of any meeting of the Members or any adjournment thereof, notwithstanding any Transfer of Units on the books of the Company after such Record Date. If no record date is fixed by the Board and notice thereof is delivered to the Members, (a) the Record Date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the day next preceding the date on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held; (b) the Record Date for determining Members entitled to express consent to Company action in writing without a meeting, when no prior action by the Board is necessary, shall be the day on which the first written consent is expressed; and (c) the Record Date for determining Members for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

SECTION 3
ALLOCATIONS

3.1 Profits and Losses.

(a) General. After giving effect to any allocations required under Section 3.1(b) and subject to the special allocations set forth in Sections 3.2, 3.3, 3.4, 3.5 and 3.7, Profits and Losses for each Fiscal Year shall be allocated to the Members (unless otherwise provided in this Agreement) pro rata based on their respective holdings of the Units.

(b) Certain Exit Facility Related Allocations.Subject to the special allocations set forth in Sections 3.2, 3.3, 3.4, 3.5 and 3.7, to the extent that with respect to any

Fiscal Year of the Company there are deductions attributable to (i) "original issue discount" (as defined for U.S. federal income tax purposes) on the Term Loans, or (ii) any portion of an Exit Facility Lender's Exit Facility Sub-Capital Account arising from a capital shift and treated as equivalent to a commitment or credit facility fee, such deductions shall be allocated to the Members in proportion to the initial amount of their Non-Exit Facility Sub-Capital Accounts as shown on Appendix II hereto. The extent to which there is "original issue discount" or any capital shift described in clauses (i) and (ii) hereof shall be determined by the Tax Matters Member in its sole discretion and shall be binding on all Members.

3.2 Special Allocations.

The following special allocations shall be made in the following order:

(a) Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(f) of the Regulations, notwithstanding any other provision of this SECTION 3, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 3.2(a) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

(b)Member Minimum Gain Chargeback. Except as otherwise provided in Section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this SECTION 3, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 3.2(b) is intended to comply with the minimum gain chargeback requirement in Section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, *provided* that an allocation pursuant to this Section 3.2(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this SECTION 3 have been tentatively made as if this Section 3.2(c) were not in this Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, *provided* that an allocation pursuant to this Section 3.2(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this SECTION 3 have been made as if Section 3.2(c) and this Section 3.2(d) were not in this Agreement.

(e)Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members, pro rata, based on Units outstanding.

(f)Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g)Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(h) Maintenance of Capital Accounts. The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event the Board shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities which are secured by contributed or distributed Property or which are assumed by the Company or any Members), are computed in order to comply with such Regulations, the Board may make such modification, *provided* that it is not likely to have a material effect on the amounts distributed hereunder. The Board also shall in good faith (x) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (y) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

3.3 Curative Allocations.

The allocations set forth in Sections 3.2(a) through 3.2(g) and 3.4 (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 3.3. Therefore, notwithstanding any other provision of this SECTION 3 (other than the Regulatory Allocations), the Board in good faith shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent and as quickly as possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Section 3.1. To the extent possible, the offsetting special allocations made to a Member pursuant to the preceding sentence shall be made to the separate Capital Account balances of such Member in such proportions as will cause such separate Capital Account balances to be the same as if the Regulatory Allocations were not part of this Agreement and all Company items were allocated pursuant to Section 3.1.

3.4 Loss Limitation.

Losses allocated pursuant to Section 3.1 shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 3. 1, the limitation set forth in this Section 3.4 shall be applied on a Member by Member basis and Losses not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the positive balances in such Member's Capital Accounts so as to allocate the maximum permissible Losses to each Member under Section 1.704-
1 (b)(2)(ii)(d) of the Regulations.

3.5 Other Allocation Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Board in good faith using any permissible method under Code Section 706 and the Regulations thereunder.

(b) The Members are aware of the income tax consequences of the allocations made by this SECTION 3 and hereby agree to be bound by the provisions of this SECTION 3 in reporting their shares of Company income and loss for income tax purposes.

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), the Members' interests in Company profits are in proportion to their respective ownership of Units outstanding on the date with respect to which such determination is being made.

(d) Tax credits and any other items other than Profits and Losses that are not otherwise expressly provided for herein shall be allocated to the Members in proportion to their respective ownership of Units outstanding as of the end of the Fiscal Year.

(e) To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Members shall endeavor to treat distributions as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

3.6 Tax Allocations: Code Section 704(c).

(a) Subject to Section 3.6(d), items of income, gain, loss, deduction and credit to be allocated for income tax purposes will be allocated among the Members on the same basis as their respective book items.

(b) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the allocation method determined by the Board in good faith in accordance with applicable Regulations.

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(d) Any elections or other decisions relating to such allocations shall be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to Section 3.6(b) or Section 3.6(c) are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Capital Account of a Member or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

3.7 Special Allocations for Distributions in Excess of Basis.

Notwithstanding the other provisions of SECTION 3, in the event that an advance or drawing is made to any Member that would be considered a distribution in excess of basis if allocations were made pursuant to the other provisions of SECTION 3, then to the extent possible such Member shall be allocated Profits (and, if necessary, gross income) for the Fiscal Year to ensure that, when added to the amount that would otherwise be allocated pursuant to SECTION 3, such Member has just a sufficient amount of basis necessary to ensure that the advance or drawing will not be considered a distribution in excess of basis. If any allocations are made pursuant to this Section 3.7, then items of income (including gross income), gain, loss and deduction shall thereafter be specially allocated among the Members in such a fashion that the allocations to each Member, when combined with the allocations made under this Section 3.7, shall equal the amounts that would have otherwise been allocated to each Member if this Section 3.7 had not been applied; *provided*, *however*, that any allocation made pursuant to this sentence shall not be made to the extent that it would itself cause a "distribution in excess of basis" problem for any Member.

SECTION 4
DISTRIBUTIONS

4.1 Distributions.

Except as otherwise provided in SECTION 11 following a Dissolution Event and as required by Section 4.4, distributions of Distributable Cash shall be made by the Company to the Members pro rata based on their respective holdings of the Units.

4.2 Amounts Withheld.

All amounts withheld by the Company pursuant to the Code or any provision of any state, local or foreign tax law with respect to any payment, distribution or allocation to the Members shall be treated as amounts paid or distributed, as the case may be, to the Members with respect to which such amount was withheld pursuant to this Section 4.2 for all purposes under this Agreement. The Company is authorized to withhold from payments and distributions, or with respect to allocations to the Members, and to pay over to any federal, state and local government or any foreign government, any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law or any foreign law, and shall allocate any such amounts to the Members with respect to which such amount was withheld.

4.3 Limitations on Distributions.

(a) The Company shall make no distributions to the Members except as provided in this SECTION 4 and SECTION 11.

(b) Notwithstanding anything contained herein to the contrary, the Company shall not be required to make any distributions provided for in this SECTION 4 unless the Company has sufficient Distributable Cash to pay such amounts. If the Company does not have Distributable Cash to pay any distributions required under this SECTION 4, then such distributions shall accrue and it shall not be a breach of this Agreement by the Company if such distributions are not paid.

4.4 Tax Distributions.

(a)The Company shall distribute to each Member at least ten (10) days before each estimated tax payment due date (April 15, June 15, September 15 and December 15) with respect to a taxable year, an amount equal to the excess, if any, of the difference between (i) the sum of the Company's estimate of such Member's cumulative distributive share of the Company's estimated taxable income, if any, for U.S. federal income tax purposes for such taxable year through the previous month's end (ignoring for this purpose the effect of any basis adjustments pursuant to an election under Code Section 754) multiplied by the Assumed Tax Rate, over (ii) the sum of all previous cash distributions made to such Member under this SECTION 4 with respect to such taxable year. Furthermore, the Company shall be required to distribute to such Member, not later than April 1st of each year, an amount that would have been distributed as the last estimated tax payment with respect to the preceding taxable year had such payment been based on such Member's distributive share of the Company's taxable income for such taxable year rather than an estimate thereof (ignoring for this purpose the effect of any basis adjustments pursuant to an election under Code Section 754).

(b) Any distribution which is made to a Member pursuant to Section 4.4(a) shall reduce the total amount of distributions which such Member would otherwise be entitled to receive under Section 4.1 and under any other distribution provisions of this Agreement and shall be deemed to have been an advance made pursuant to such Sections.

4.5 Nature of Distributions.

Any distributions made to holders of Units during an Fiscal Year pursuant to this SECTION 4 shall be considered drawings against their distributive shares of income for purposes of Treasury Regulation Section 1.731-1(a)(1)(ii).

SECTION 5
MANAGEMENT

5.1 General; Management Company.

(a) Except as set forth herein (including without limitation those actions expressly required by this Agreement to be approved by the Members), the Business, properties and affairs of the Company shall be managed, and all powers of the Company shall be exercised, by a committee of Managers (the "**Board**") designated and/or elected by the Members pursuant to the terms of this Agreement or as delegated by the Board to any individual Manager, committee of Managers or an officer of the Company. No Member, other than in his or her capacity as a Manager, as applicable, shall have authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditure on behalf of the Company.

(b) The Board shall hire the Management Company to manage generally the day-to-day activities of PEH and the Plant LLCs in accordance with the terms of the Asset Management Agreement. Additionally, the Board shall employ the Chief Operating Officer, who shall be responsible for the administration of the Company, PEH and the Plant LLCs, including without limitation acting as the primary liaison between the Company, PEH and the Plant LLCs, on the one hand, and the Management Company, on the other hand. Initially, the Management Company shall be Pacific Ethanol, Inc. pursuant to the Asset Management Agreement.

5.2 Board of Managers; Number, Term and Designation or Election of Managers.

(a) The Board shall consist of five (5) members (each, a "**Manager**"). The initial Managers as of the Effective Date are: Ned Kleinschmidt, Merrill Kramer, Alex Sorokin and Denis J. Taura, with one (1) vacancy to be filled, in accordance with Section 5.2(c) or 5.2(d), as applicable, upon the earlier to occur of the (i) exercise of the Call Option and (ii) expiration of the 90-day Call Option exercise period as provided in the Call Option Agreement. A Manager need not be a resident of the State of Delaware or a Member of the Company.

(b) Each of the initial Managers, including any Manager elected to fill the initial vacancy, shall hold office until the earlier of (i) the first anniversary of the Effective Date and until such Manager's successor is designated or elected and qualified and (ii) his or her resignation, removal or death. Thereafter, each Manager shall hold office for a period of one (1) year (and until his or her successor is designated or elected and qualified) or such shorter period resulting from such Manager's resignation, removal or death. New Managers shall be designated or elected, as applicable, prior to the end of the term of the existing Board, or as soon as practicable after the end of the term of the existing Board (each such period of designation and election, a "**Board Election**"). There is no limit on the number of terms a Manager may serve on the Board.

(c) Each Member holding at least twenty percent (20%) of the Units outstanding as of the Record Date for any Board Election (or as of the time a vacancy is to be filled pursuant to Section 5.3(c)) (a "**Designating Member**") shall be entitled to designate one Manager (each such Manager, a "**Designated Manager**") to serve on the Board for the ensuing term. At such time as the vacancy on the initial Board is to be filled, if the Call Option shall have been exercised for at least twenty percent (20%) of the Units then outstanding, the Call Option Counterparty shall be entitled to designate a Manager to fill such vacancy; if the Call Option has not been exercised, or was exercised for less than twenty percent (20%) of the Units then outstanding, the initial vacancy shall be filled in accordance with Section 5.2(d).

(d) Any Managers that are not designated in accordance with Section 5.2(c) will be elected by the Members who are not Designating Members as of the Record Date for the applicable Board Election. Each such non-Designating Member may nominate one candidate (and if there are fewer nominees than the number of Managers to be elected, any non-Designating Member may nominate additional candidates). Each non-Designating Member may cast in favor of one or more nominees a number of votes, in the aggregate, equal to such Member's number of Units multiplied by the number of Managers to be elected in such Board Election. Each Manager will be selected by plurality of the votes cast by the non-Designating Members.

5.3 Resignation and Removal of Managers.

(a) Resignation. Any Manager may resign at any time by giving prior written notice to the Members, such resignation to be effective upon the receipt of such notice or at such later time as is determined by the Board. Unless otherwise specified therein, the acceptance of such resignation by the Members or the Board shall not be necessary to make it effective. The resignation of any Manager who also is a Member shall not affect such Person's rights as a Member.

(b) Removal.

(i) Any Designated Manager may be removed at any time by (i) the Designating Member that designated him or her or (ii) the affirmative vote of Members holding a Super-supermajority of the Units then held by all Members other than the Member who designated such Designated Manager.

(ii) A Manager elected pursuant to Section 5.2(d) may be removed by the affirmative vote of Members holding a Super-supermajority of the Units then outstanding.

(iii) The removal of any Manager who also is a Member shall not affect such Person's rights as a Member.

(c) Vacancies. In the event that any Designated Manager resigns, is removed from the Board or dies, the Member who appointed such Designated Manager shall (if, at the time such vacancy is to be filled, such Member still is a Designating Member) appoint a successor Manager. If such Member is not a Designating Member at the time such vacancy is to be filled, or with respect to any other vacancy on the Board (whether by resignation, removal or death), a new election shall be held in accordance with Section 5.2(d) to fill such vacancy.

5.4 Appointment of Officers.

(a) The Board shall have the right to appoint a chief operating officer (the "**Chief Operating Officer**") and other officers of the Company to assist with the affairs of the Company. Such other officers may include from time to time, a president, one or more vice presidents, a chief financial officer, a secretary and one or more assistant secretaries.

(b) The Chief Operating Officer shall be in charge of the operations of the Company, including regular communications with the Management Company, and will report to the Board and have responsibility to cause the Company to carry out all directives of the Board and any committees formed by the Board. The Chief Operating Officer may sign any certificates evidencing the Units and contracts and other instruments on behalf of the Company, except where the signing thereof shall be expressly delegated by the Board to a Manager or another officer or agent of the Company. The Chief Operating Officer shall not have power or authority not granted to the Board and in no event shall he or she authorize, engage in or enter into any of the transactions or actions that require the approval of the Members hereunder, unless and until such Member approval has been provided and he or she has been directed by the Board to act in connection therewith.

(c) The Chief Operating Officer and any other officers shall serve at the pleasure of the Board, subject to all rights, if any, of any such Person under any contract of employment. Any individual may hold any number of offices. In addition to those powers and duties set forth in Section 5.4(b) with respect to the Chief Operating Officer, the officers shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

5.5 Board Meetings.

(a) The Board, acting by majority vote, shall be entitled to schedule regularly scheduled meetings, which meetings shall be held either within or without the State of Delaware at whatever place is specified in the call of the meeting. No notice need be given to Managers of regular meetings for which the Managers have previously designated a time and place for the meeting. Special meetings may be called by two (2) or more Managers upon three (3) Business Days' advance notice, which notice may be given by mail, facsimile or email and shall include the place, time and purpose(s) of the meeting. Notice need not be given to any Manager if (i) action is taken under Section 5.6(c), (ii) a written waiver of notice is executed before or after the meeting by such Manager or (iii) such Manager attends the meeting in question, unless such attendance was for the express purpose of objecting, at the beginning of such meeting, to the transaction of any business because such meeting was not lawfully called or convened.

(b) Any Manager shall be permitted to attend any meeting of the Board in person or by conference telephone or similar communications equipment, and participation in a meeting via such equipment will constitute presence in person at such meeting. The Managers, by majority vote, may appoint from among themselves a Chairman of the Board to preside at meetings of the Board.

(c) All Members will receive at least three (3) Business Days' notice of any Board meeting.

(d) A single representative of any Member that (i) is not a Manager, (ii) is not a Designating Member and (iii) holds at least four percent (4%) of the Units then outstanding, (y) may attend, subject to the restrictions contained herein, any meeting of the Board solely as an observer and (z) shall receive, in the same format, the materials provided to the Managers in connection with any meeting of the Board. Prior to attending any meeting of the Board and/or receiving any materials pursuant to this Section 5.5(d), the Board may require the Member and the Member's designated representative to execute a confidentiality and non-disclosure agreement (with operative provisions substantially in the form of the provisions set forth on Exhibit C attached hereto (the "**Confidentiality Provisions**")) with regard to the information to be presented or discussed at such meeting or included in such materials.

5.6 Quorum of and Action by Board.

(a)Quorum. The presence, in person, of a majority of the Managers then serving on the Board shall constitute a quorum for the transaction of business at any meeting of the Board.

(b)Action at a Meeting. Any action to be taken or approved by the Board hereunder must be taken or approved by majority vote of the Board and any action so taken or approved shall constitute the act of the Board; *provided* that any action of the Board shall exclude any Manager with a financial interest, or whose Affiliate has a financial interest, in such action and such Manager shall excuse himself or herself from the Board's consideration of such action. Without limiting the generality of the foregoing, the affirmative vote of a majority of the Managers shall be required to:

(i) act in connection with (y) any litigation, arbitration or mediation or (z) the settlement, in an amount less than $1,000,000, of any legal claims;

(ii) retain or dismiss outside auditors;

(iii) establish or amend any material accounting policies;

(iv) approve reasonable expense reserves for the Company's operations, such as audit, accounting and legal fees and any costs of maintaining the books and records of the Company;

(v) execute and deliver contracts, agreement or commitments involving the payment by or to the Company (and PEH and the Plant LLCs on a consolidated basis, as applicable) of less than $1,000,000 or having a term of less than 12 months, or any amendments thereto;

(vi) incur or pay any capital expenditure of the Company (and PEH and the Plant LLCs on a consolidated basis, as applicable) of less than $1,000,000 and having a term of less than twelve (12) months;

(vii) substantially cease operations of any Plant for any reason;

(viii) purchase or redeem any Units or any securities convertible into Units (which purchase or redemption shall be offered to all Members, pro rata, based on Units outstanding);

(ix) request, in accordance with Section 2.3(b), that the Members make additional Capital Contributions and determine, in good faith on behalf of all the Members, the value of the Units for purposes thereof;

(x) issue new Units in respect of any additional capital contribution made in accordance with Section 2.3(b);

(xi) hire and fire, and determine the salary of, the Chief Operating Officer;

(xii) approve, adopt or modify, the operating and capital expenditure budgets (the "**Budgets**") for the Company (which shall be on an annual basis) and PEH and/or any Plant LLC (which, in each case, shall be for such period as is determined by the Board with input from the Chief Operating Officer); *provided* that any capital expenditure by the Company (and PEH and the Plant LLCs on a consolidated basis, as applicable) included in any Budget that is equal to or in excess of $1,000,000 or has a term equal to or in excess of twelve (12) months shall be approved by Members holding at least a Supermajority of the then outstanding Units in accordance with Section 6.8(c)(ix);

(xiii) remove or appoint the tax matters partner; and

(xiv) approve of the Company's tax returns.

(c) Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if a written consent thereto is signed by a majority of the entire Board (or, if greater, Managers having not less than the minimum number of votes required for such action) and filed with the Company records. Such consent shall have the same force and effect as a vote of the Managers at a meeting duly called and held. Prompt notice of the taking of an action without a meeting of the Board shall be given to any Managers that have not consented, but the failure to give such notice shall not invalidate or otherwise affect the validity of any action properly taken pursuant to this Section 5.6(c).

5.7 Compensation.

Members holding more than fifty percent (50%) of the Units then outstanding shall have the right to fix the compensation of the Managers, which compensation shall be within the market range that is customary for compensation of managers or directors serving in similar positions. Each Manager shall be entitled to reimbursement for his or her reasonable out-of-pocket expenses incurred in attending any meeting in his or her capacity as a Manager and nothing contained herein shall preclude any Manager from receiving compensation pursuant to any employment or consulting agreement or arrangement with the Company approved pursuant to the terms of this Agreement.

5.8 Other Business.

No Manager is obligated to devote all of his or her time or business efforts to the affairs of the Company. Each Manager shall devote to the Company the time, effort and skill appropriate for the affairs of the Company and the operation of the Business. Nothing contained in this Agreement shall be construed to impose on any Manager any duty or obligation to disclose or offer to the Company or any of the Members, or obtain for the benefit of the Company or any Member, any other business venture or interest therein (other than any such business venture or interest that directly involves the Company, PEH and/or any Plant LLC).

5.9 Standard of Care; Liability.

Each Manager shall perform his or her duties as a Manager in good faith, in a manner such Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Manager who so performs the duties of Manager shall not have any liability by reason of being or having been a Member of the Company. The Managers do not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct or derivation of an improper personal benefit by such Manager.

5.10 Subsidiary Matters.

Each of the Members acknowledges and agrees that, except as expressly set forth in this Agreement (including without limitation Section 6.8), the Board shall have the sole right to make any and all decisions and determinations to be made by the Company with respect to, and to cast all votes and execute all written consents to be executed or cast by the Company (or otherwise direct the actions of PEH) as the sole member of PEH and to direct PEH to cast all votes and execute all written consents to be executed or cast by PEH (or otherwise direct the actions of any Plant LLC) as the sole member of each of the Plant LLCs; *provided* that, if PEH or any Plant LLC is to take a certain action, and, if such action were instead to be taken by the Company, the Members would have consent rights as set forth in this Agreement (including without limitation Section 6.8), such action shall not be taken without the consent of those Members as would be required if the Company was taking such action.

SECTION 6
ROLE OF MEMBERS: WITHDRAWAL, PARTITION AND OTHER ISSUES

6.1 Resignation.

Except as otherwise provided in SECTION 4 and SECTION 11, no Member shall demand or receive a return on or of its Capital Contributions or resign from the Company without the consent of all Members. Under circumstances requiring a return of any Capital Contributions, no Member has the right to receive Property other than cash except as may be specifically provided herein.

6.2 Member Compensation.

No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or any Capital Account or for services rendered on behalf of the Company, or otherwise, in its capacity as a Member, except as otherwise provided in this Agreement or any employment agreement entered into by the Company with such Member.

6.3 Members' Liability.

Except as otherwise expressly provided in the Act, no Member shall be personally liable under a judgment, decree or order of a court, or in any other manner for the debts or any other obligations or liabilities of the Company. A Member shall be liable only to make its Capital Contributions (including any additional Capital Contributions such Member agrees to make pursuant to Section 2.3(b)) and shall not be required to restore a deficit balance in its Capital Account or to lend any funds to the Company or, after its Capital Contributions have been made, to make any additional contributions, assessments or payments to the Company. Nothing contained in this Agreement shall be construed to impose on any Member any duty or obligation to disclose or offer to the Company or any of the other Members, or obtain for the benefit of the Company or any other Member, any other business venture or interest therein.

6.4 Partition.

Each Member waives, to the fullest extent permitted by law, its rights to have any Property partitioned, or to file a complaint or to institute any suit, action or proceeding at law or in equity to have any Property partitioned, and each Member, on behalf of itself, its successors and its assigns hereby waives any such right.

6.5 Other Instruments.

Each Member hereby agrees to execute and deliver to the Company within ten (10) Business Days after receipt of a written request therefor, such other and further documents and instruments, statements of interest and holdings, designations, powers of attorney and other instruments and to take such other action as the Company reasonably deems necessary, useful or appropriate to comply with any laws, rules or regulations or as may be necessary to enable the Company to fulfill its responsibilities under this Agreement.

6.6 Authority.

No Member (other than in his or her capacity as a Manager, as applicable) shall have authority to bind the Company.

6.7 Meetings of Members.

(a) The Board, acting by majority vote, may schedule meetings of the Members from time to time, which meetings shall be held either within or without the State of Delaware at whatever place is specified in the call of the meeting. Meetings shall also be held upon the request of Members holding not less than twenty percent (20%) of the outstanding Units, such request to be delivered in writing to the Chief Operating Officer. The Board shall, within ten (10) days of the receipt by the Chief Operating Officer of such written request, set the date, time and place for a meeting of Members, to be held not later than twenty (20) days from the date of receipt by the Chief Operating Officer of such written request, and shall give Members timely notice of the date and time for and place for such meeting. Written notice of any Member meeting shall be delivered to the Members in accordance with Section 13.1 and shall include place, time and purpose(s) of such meeting.

(b) Notice need not be given to any Member if (i) action is taken under Section 6.9, (ii) a written waiver of notice is executed before or after the meeting by such Member or (iii) such Member attends the meeting in question, unless such attendance was for the express purpose of objecting, at the beginning of such meeting, to the transaction of any business because such meeting was not lawfully called or convened.

(c) Any Member shall be permitted to attend any meeting of the Members in person or by conference telephone or similar communications equipment, and participation in a meeting via such equipment will constitute presence in person at such meeting. The presence in person or by proxy of Members holding not less than a Supermajority of the Units entitled to vote on the matters scheduled to be presented at the meeting for action by the Members, shall constitute a quorum for the conduct of business at such meeting.

6.8 Actions Requiring Consent of Members.

(a) Notwithstanding anything to the contrary in this Agreement, none of the following actions may be taken without the consent or approval of (y) a majority of the Board and (z) all of the Members:

(i) the making of any loan by the Company, PEH or any Plant LLC (other than loans by any of the foregoing to any of the foregoing);

(ii) purchasing or otherwise acquiring any stock or securities of, or any interest in, or making any contribution to, any other entity (including without limitation the formation of any new subsidiary);

(iii) taking any action to change the authorized number of members, or form of management, of PEH or any of the Plant LLCs;

(iv) except for capital expenditures approved pursuant to Section 5.6(b)(vi) or 6.8(c)(ix) or as reflected in a Budget approved pursuant to Section 5.6(b)(xi), purchasing or otherwise acquiring any property or assets;

(v) obligating the Company, PEH or any of the Plant LLCs to do any of the foregoing; and

(vi) any amendment of Section 5.6(b), Section 8.1 or this Section 6.8.

(b) Notwithstanding anything to the contrary in this Agreement, none of the following actions may be taken without the consent or approval of (y) a majority of the Board and (z) Members holding at least a Super-supermajority of the then outstanding Units:

(i) any amendment of the Certificate or of Section 9 hereof;

(ii) any material amendment of the limited liability company agreement of PEH or any of the Plant LLCs;

(iii) requesting that the Members make additional Capital Contributions in accordance with Section 2.3(b) hereof;

(iv) the commencement of operations of any Plant that is then in a cold shut-down or hot-idle state;

(v) engagement by the Company, PEH or any Plant LLC in any line of business other than the Business (in the case of the Company), the direct ownership of the Plant LLCs (in the case of PEH) and the ownership and operation of the Plants (in the case of the Plant LLCs);

(vi) the execution or amendment of any contract, agreement or arrangement (excluding agreements with respect to indebtedness entered into as of the Effective Date) in a manner that restricts or limits the ability of PEH or any Plant LLC to make distributions to the Company and/or PEH; and

(vii) obligating the Company, PEH or any of the Plant LLCs to do any of the foregoing.

(c) Notwithstanding anything to the contrary in this Agreement, none of the following actions may be taken without the consent or approval of (y) a majority of the Board and (z) Members holding at least two-thirds (66.67%) (a "**Supermajority**") of the then outstanding Units:

(i) engaging in any sale of more than fifty percent (50%) of the Units then outstanding, or any or all of the equity interests of PEH or any Plant LLC;

(ii) engaging in any sale of all or substantially all the assets of the Company, PEH or any Plant LLC;

(iii) the consummation of a conversion in accordance with Section 8.2;

(iv) any public offering of the common stock of the Company or a Roll-up Corporation;

(v) entering into any merger, consolidation, reorganization or recapitalization of the Company, PEH or any Plant LLC;

(vi) taking any action to commence a voluntary case or proceeding under applicable federal or state bankruptcy, insolvency, reorganization or other similar law or any other case or proceeding to be adjudicated a bankrupt or insolvent or consenting to the entry of a decree or order appointing a trustee, custodian, receiver, liquidator, assignee or similar official or to initiate a voluntary dissolution, liquidation or termination, in each case, of the Company, PEH or any Plant LLC;

(vii) the abandonment, or commencement of actions to abandon, any Plant;

(viii) entering into any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of the Company, other than on terms and conditions substantially as favorable to the Company as would be obtainable by the Company at the time in a comparable arm's-length transaction with a Person other than an Affiliate; *provided* that the requisite consent for such action shall exclude any Member who is, or whose Affiliate is, to be party to such transaction(s);

(ix) the incurrence or payment of any capital expenditure by the Company (and PEH and the Plant LLCs on a consolidated basis, as applicable) equal to or in excess of $1,000,000 or having a term equal to or in excess of twelve (12) months; *provided* that the requisite consent for such action shall exclude any Member with a financial interest, or whose Affiliate has a financial interest, in such capital expenditure;

(x) the execution or amendment of any contract, agreement or commitment involving the payment by or to the Company (and PEH and the Plant LLCs on a consolidated basis, as applicable) equal to or in excess of $1,000,000 or having a term equal to or in excess of one (1) year; *provided* that the requisite consent for such action shall exclude any Member with a financial interest, or whose Affiliate has a financial interest, in such contract, agreement or commitment;

(xi) the settlement, in an amount equal to or in excess of $1,000,000, of any legal claims against the Company, PEH or any Plant LLC or with respect to any Plant;

(xii) incurring or becoming liable for indebtedness (other than indebtedness entered into pursuant to the Credit Agreement) by (1) any Plant LLC, other than in the ordinary course of operating the Plants or (2) the Company or PEH;

(xiii) the granting of any lien in respect of any assets of the Company, PEH or any Plant LLC (including without limitation the equity interests of PEH or any Plant LLC), other than liens permitted pursuant to indebtedness entered into as of the Effective Date; and

(xiv) obligating the Company, PEH or any of the Plant LLCs to do any of the foregoing.

6.9 Action By Written Consent.

Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if a written consent setting forth the action to be taken is signed by Members holding such number of Units whose affirmative vote would be sufficient to take the action had the vote been taken at a duly held meeting at which Members holding all Units were present, and such consent shall have the same force and effect as a vote of the Members at a meeting duly called and held. No advance notice shall be required to be given in connection with use of a written consent pursuant to this Section 6.9. Prompt notice of the taking of any action without a meeting by less than of all of the Members shall be given to those Members who have not consented to such action, but the failure to give such notice shall not invalidate or otherwise affect the validity of any action properly taken pursuant to this Section 6.9.

6.10 Members that are Lenders.

To the fullest extent permitted by law, any Member that is also a lender to the Company (or, as applicable, whose Associated Lender is a lender to the Company) is expressly permitted to act in accordance with the terms of the documents and agreements evidencing its (or, as applicable, its Associated Lender's) lending relationship with the Company as if it were not a Member hereunder, even if such actions would be adverse to the interests of the Company. This means, among other things, that any such Member (or its Associated Lender, as applicable) will be entitled to pursue its rights and remedies against the Company in accordance with the terms of such documents and agreements.

6.11 BHCA Members.

Notwithstanding any other provision of this Agreement, all BHCA Members shall be subject to the limitations on voting set forth in this Section 6.11. If at any time a BHCA Member holds Units that would otherwise represent 5% or more of the total Units then outstanding and the vote, consent or decision of a Member is required or permitted pursuant to this Agreement (including, without limitation, the right to designate or elect any Manager as provided herein), such BHCA Member shall not be entitled to participate in such vote or consent, or to make such decision, with respect to the portion of such BHCA Member's interest in excess of 4.99% of the Units then outstanding, and such vote, consent or decision shall be tabulated or made as if such BHCA Member were not a Member with respect to such BHCA Member's Units in excess of 4.99% of the total Units then outstanding. In the event that two or more BHCA Members are

Affiliated, the limitations of this Section 6.11 shall apply to the aggregate Units held by such Affiliated BHCA Members and each such BHCA Member shall be entitled to vote its *pro rata* portion of 4.99% of the Units held by such Affiliated BHCA Members. Except as provided in this Section 6.11, any Units of a BHCA Member held as non-voting Units shall be identical in all respects to the Units of the other Members. Any such Units held as non-voting Units shall remain non-voting Units in the event that the BHCA Member holding such Units ceases to be a BHCA Member and shall continue as non-voting Units with respect to any assignee or other Transferee of such Units. Notwithstanding the foregoing, any BHCA Member may elect in writing upon its admission to the Company for this Section 6.11 not to apply to its Units. Any such election by a BHCA Member may be rescinded at any time by written notice to the Board, *provided* that any such rescission shall be irrevocable.

SECTION 7
ACCOUNTING, BOOKS AND RECORDS

7.1 Accounting, Books and Records.

(a) The Company shall keep each of the following:

(i) separate books of account for the Company which shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Company and the operation of the Business in accordance with this Agreement;

(ii) a current list of the full name and last known business, residence, or mailing address of each Member, both past and present;

(iii) a copy of the Certificate and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which any amendment has been executed;

(iv) copies of the Company's federal, state, and local income tax returns and reports, if any, for the six (6) most recent years;

(v) a copy of this Agreement; and

(vi) copies of any writings permitted or required under the Act regarding the obligation of a Member to perform any enforceable promise to contribute cash or property or to perform services as consideration for such Member's Capital Contribution.

(b) In accordance with Section 18-305 of the Act, but subject to Section 18-305(c) of the Act, any Member or its designated representatives for a proper purpose related to its position as a Member has the right to have reasonable access during normal business hours to and inspect and copy the contents of such books or records and such additional financial information, documents, books and records regarding the affairs of the Company. Prior to any inspection of such books and records, the Board may require the Member and the Member's designated representatives to execute a confidentiality and non-disclosure agreement (with operative provisions substantially in the form of the Confidentiality Provisions) with regard to the information to be inspected or copied.

7.2 Reports.

The Board of the Company shall be responsible for causing the preparation and distribution of quarterly financial reports of the Company.

7.3 Tax Matters.

(a) Tax Elections. The Tax Matters Member shall, without any further consent of the Members being required (except as specifically required herein), make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law: (i) to adjust the basis of Property pursuant to Code Sections 754, 734(b) and 743(b), or comparable provisions of state, local or foreign law, in connection with Transfers of Units and Company distributions; and (ii) with the consent of (A) a majority of the Board and (B) Members holding at least a Supermajority of the Units then outstanding, to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to adjustments to the Company's federal, state, local or foreign tax returns. To the extent provided in Code Sections 6221 through 6231 and similar provisions of federal, state, local, or foreign law, the Tax Matters Member shall represent the Company and the Members before taxing authorities or courts of competent jurisdiction in tax matters affecting the Company or the Members in their capacities as Members, and to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members. Pacific Ethanol Equity Holdings LLC is hereby specifically authorized to act as the "**Tax Matters Member**" under the Code and in any similar capacity under state or local law.

(b) Tax Information. Necessary tax information shall be delivered to each Member as soon as practicable after the end of each Fiscal Year.

SECTION 8
AMENDMENTS; CONVERSION

8.1 Amendments.

(a) Amendments to this Agreement may be proposed by any Member. A proposed amendment shall be adopted and be effective as an amendment hereto if it receives the approval of a majority of the Board and Members holding at least a Supermajority of the Units then outstanding (or, if greater, Members holding not less than the minimum number of Units required for such action as otherwise provided herein, including without limitation in Section 6.8).

(b) Notwithstanding Section 8.1(a), this Agreement shall not be amended without the consent of each Member adversely affected if such amendment would (i) modify the limited liability of a Member, (ii) alter the interest of a Member in Profits, Losses, other items, or any Company distributions or (iii) modify Section 2.3(b) or otherwise require the making of an additional Capital Contribution other than upon the terms set forth herein as of the Effective Date. The preceding sentence shall not apply to the conversion of the Company effected pursuant to Section 8.2.

8.2 Conversion.

(a) Notwithstanding anything to the contrary in this Agreement, the Company may, with the consents required by Section 6.8(c)(iii), change the form of organization in which the Company conducts its business from a limited liability company to a corporation ("**Roll-Up Corporation**"), either directly, through a merger with an existing corporation, or in any other manner elected by the Board, make all exchanges, and take all other actions, if any, as are reasonably necessary in connection with any conversion pursuant to this Section 8.2(a).

(b) The shares of capital stock of the corporation resulting from a conversion of the Company to a corporation pursuant to Section 8.2(a) shall be distributed among the Members so that each Member shall receive an amount of such capital stock having a fair market value equal to the amount that would have been distributed to such Member pursuant to Section 11.2 (after adjusting the Members' Capital Accounts for the hypothetical gain or loss that would be realized by the Company if all of the assets and business, subject to all liabilities, of the Company had been sold immediately prior to the conversion pursuant to Section 11.10 for an aggregate fair market value equal to the aggregate fair market value of such capital stock), (ii) each Member receives the same class of capital stock in such corporation and (iii) each Member's capital stock enjoys the same ownership rights (including payments, voting power and otherwise) as the other Members' capital stock.

SECTION 9
TRANSFERS

9.1 Restrictions on Transfers.

No Member may Transfer, offer to Transfer, or accept an offer from any proposed Transferee for, all or any amount of its Units to another Person except in accordance with the terms and conditions set forth in this SECTION 9. A Transfer completed in accordance herewith is referred to in this Agreement as a "**Permitted Transfer**".

9.2 Conditions to Permitted Transfers.

(a) Subject to Section 9.3(c), a Transfer shall not be treated as a Permitted Transfer unless and until all the following conditions are satisfied:

(i) The Transfer is made to a Permitted Transferee.

(ii) [Intentionally omitted.]

(iii) Except in the case of a Transfer involuntarily by operation of law, the Transferor and Transferee shall execute and deliver to the Company such documents and instruments of conveyance (including, without limitation, a Joinder Agreement) as may be reasonably necessary or appropriate in the opinion of counsel to the Company to effect such

Transfer (which, in the case of a Transfer in connection with the Call Option Counterparty's exercise of the Call Option, shall be any such documentation required pursuant to the terms of the Call Option Agreement and a Joinder Agreement). In the case of a Transfer of Units involuntarily by operation of law, the Transfer shall be confirmed by presentation to the Company of legal evidence of such Transfer, in form and substance reasonably satisfactory to counsel to the Company. In all cases, Company shall be reimbursed by the Transferor and/or Transferee for all costs and expenses that it reasonably incurs in connection with such Transfer.

(iv) The Transferor and Transferee shall furnish the Company with the Transferee's taxpayer identification number, sufficient information to determine the Transferee's initial tax basis in the Units transferred, and any other information reasonably necessary to permit the Company to file all required federal and state tax returns and other legally required information statements or returns. Without limiting the generality of the foregoing, the Company shall not be required to make any distribution otherwise provided for in this Agreement with respect to any transferred Units until it has received such information.

(v) The Transfer shall not (A) cause the Company to be treated as a "publicly traded partnership" taxable as a corporation for federal income tax purposes, (B) cause the Company to be treated as a corporation for U.S. federal income tax purposes, (C) except in the case of (x) an Approved Sale or (y) any Transfer occurring prior to December 31, 2010 (including without limitation any Transfer resulting from the settlement of a Pending Trade or from the Call Option Counterparty's exercise of the Call Option), cause the termination of the Company pursuant to Section 708(b)(1)(B) of the Code or (D) affect the Company's existence as a limited liability company under the Act. The Board may, prior to the admission of a Transferee to the Company as a substituted Member in accordance with Section 9.5, require such Transferee to furnish an opinion of counsel in form and substance reasonably satisfactory to the Company that the Transfer of Units to the Transferee is in compliance with this Section 9.2(a)(v).

(b) No Member shall in any manner pledge, hypothecate or encumber, or grant options with respect to, his, her or its Units; *provided* that any Member may assign or pledge his, her or its Units as collateral for any loan (i) with the consent of at least four of the five Managers or (ii) made to the Company, PEH or any Plant LLC if required in connection with such a loan by Members holding a Super- Supermaj ority of the Units then outstanding (then each Member will enter into a pledge and/or security agreement (without recourse, except to the Units so pledged) in the same form as that entered into by Members holding a SuperSupermajority of the Units then outstanding).

(c) Members (excluding the Member proposing the applicable Transfer) holding a Super- Supermaj ority of the Units then outstanding may waive, with respect to any proposed Transfer, any of the conditions of a Permitted Transfer set forth herein and, upon the granting of such waiver, such proposed Transfer shall be a Permitted Transfer for purposes of this Agreement.

9.3 Prohibited Transfers.

(a) Except as otherwise specifically provided herein, any purported Transfer of Units that is not a Permitted Transfer shall, to the fullest extent permitted by law, be null and void and of no force or effect whatever; *provided* that, if the Company is required to recognize a Transfer that is not a Permitted Transfer, the Units Transferred shall be strictly limited to the Transferor's rights to allocations and distributions as provided by this Agreement with respect to the Transferred Units, which allocations and distributions may be applied (without limiting any other legal or equitable rights of the Company) to satisfy any debts, obligations, or liabilities for damages that the Transferor or Transferee of such Units may have to the Company.

(b) In the case of a Transfer or attempted Transfer of Units that is not a Permitted Transfer, the parties engaging or attempting to engage in such Transfer shall, to the fullest extent permitted by law, be liable to indemnify and hold harmless the Company and the other Members from all cost, liability, and damage that any of the Company or such indemnified Members may incur (including, without limitation, incremental tax liabilities, lawyers' fees and expenses) as a result of such Transfer or attempted Transfer and efforts to enforce the indemnity granted hereby.

(c) Exit Facility Members are subject to the Credit Agreement's requirement that any assignment or participation of debt within the ninety (90) day period following the Effective Date be accompanied by an assignment of an equivalent proportion of the Units of such Exit Facility Member and of any of its Affiliates. Therefore, each Exit Facility Member shall not, during the ninety (90) day period following the Effective Date, Transfer any of the Units such Member received on the Effective Date in its capacity as an Exit Facility Member in accordance with Section 6.02(a) of the Reorganization Plan.

9.4 Rights of Unadmitted Assignees.

A Person who acquires Units pursuant to a Permitted Transfer but who is not admitted as a substituted Member pursuant to Section 9.5 shall be entitled only to allocations and distributions with respect to such Units in accordance with this Agreement, and shall have no right to any information or accounting of the affairs of the Company, shall not be entitled to inspect the books or records of the Company, and shall not have any of the rights of a Member under the Act or this Agreement.

9.5 Admission of Substituted Members.

Subject to the other provisions of this SECTION 9, a Transferee of Units may be admitted to the Company as a substituted Member only upon satisfaction of the conditions set forth in this Section 9.5:

(a) the Units with respect to which the Transferee is being admitted were acquired by means of a Permitted Transfer;

(b) the Transferee of Units (other than, with respect to clause (i) below, a Transferee that was a Member prior to the Transfer) shall, by written instrument in form and substance reasonably satisfactory to the Board (and, in the case of clause (ii) below, the Transferor Member), (i) accept and adopt the terms and provisions of this Agreement and (ii) assume the obligations of the Transferor Member under this Agreement with respect to the

Transferred Units. The Transferor Member shall be released from all such assumed obligations except (x) those obligations or liabilities of the Transferor Member prior to transfer arising out of a breach of this Agreement by the Transferor Member, (y) those obligations or liabilities of the Transferor Member based on events occurring, arising or maturing prior to the date of Transfer and (z) in the case of a Transfer to any of its Affiliates, any Capital Contribution or other financing obligation of the Transferor Member under this Agreement;

(c) the Transferee pays or reimburses the Company for all reasonable legal, filing, and publication costs that the Company incurs in connection with the admission of the Transferee as a Member with respect to the Transferred Units; and

(d) except in the case of a Transfer involuntarily by operation of law, if required by the Board, the Transferee (other than a Transferee that was a Member prior to the Transfer) shall deliver to the Company evidence of the authority of such Person to become a Member and to be bound by all of the terms and conditions of this Agreement, and in all cases, the Transferee and Transferor shall each execute and deliver such other instruments as the Board reasonably deems necessary or appropriate to effect, and as a condition to, such Transfer, including amendments to the Certificate or any other instrument filed with the State of Delaware or any other state or governmental authority.

9.6 Distributions and Allocations in Respect of Transferred Units.

If any Units are Transferred during any Fiscal Year in compliance with the provisions of this SECTION 9, Profits, Losses, each item thereof, and all other items attributable to the Transferred Units for such Fiscal Year shall be divided and allocated between the Transferor and the Transferee by taking into account their varying holdings of Units during the calendar year in accordance with Code Section 706(d), using any conventions permitted by law and selected by the Board. All distributions on or before the date of such Transfer shall be made to the Transferor, and all distributions thereafter shall be made to the Transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which it is given notice of such Transfer, *provided* that, if the Company is given notice of a Transfer at least ten (10) Business Days prior to the Transfer, the Company shall recognize such Transfer as of the date of such Transfer, and *provided further* that if the Company does not receive a notice stating the date such Units were transferred and such other information as the Board may reasonably require within thirty (30) days after the end of the Fiscal Year during which the Transfer occurs, then all such items shall be allocated, and all distributions shall be made, to the Person who, according to the books and records of the Company, was the owner of the Units on the last day of such Fiscal Year. None of the Company, any Manager nor any Member shall incur any liability for making allocations and distributions in accordance with the provisions of this Section 9.6, whether or not the Company has knowledge of any Transfer of ownership of any Units.

9.7 Tag-Along Rights.

(a) If at any time (or from time to time in any 120-day period; *provided* that any Permitted Transfer resulting from the settlement of a Pending Trade shall not be considered for purposes of applying this 120-day period) a Member (a "**Tag-Along Seller**") agrees to

Transfer ten percent (10%) or more of the total Units then outstanding for value to any Permitted Transferee (other than an Affiliate of such Tag-Along Seller, a "**Tag-Along Purchaser**" and such sale a "**Tag-Along Sale**"), then, each other Member (each, a "**Tag-Along Rightholder**") shall have the right to make an offer to sell to such Tag-Along Purchaser, upon the terms set forth in the Tag-Along Notice, a number of Units held by such Tag-Along Rightholder (the "**Tag-Along Offered Units**") equal to the product obtained by multiplying (i) the aggregate number of Units intended to be sold by the Tag-Along Seller in such Tag-Along Sale by (ii) a fraction, the numerator of which is the number of Units owned by such Tag-Along Rightholder immediately prior to such Tag -Along Sale and the denominator of which is the total number of Units outstanding immediately prior to such Tag-Along Sale. Notwithstanding any other provision of this Section 9.7, any Tag-Along Sale must satisfy the conditions set forth in Section 9.2 and otherwise be a Permitted Transfer.

(b) The Tag-Along Seller intending to Transfer Units to a Tag-Along Purchaser shall give written notice to each Tag-Along Rightholder of each proposed Transfer by it that gives rise to the rights of the Tag-Along Rightholders set forth in this Section 9.7, at least fourteen (14) days prior to the proposed consummation of such transfer, setting forth the name of such Tag-Along Seller, the number of Units proposed to be sold by such Tag-Along Seller, the name and address of the proposed Tag-Along Purchaser, the proposed amount and form of consideration and terms and conditions of payment offered by such Tag-Along Purchaser, the percentage of Units that such Tag-Along Rightholder may sell to such Tag-Along Purchaser (determined in accordance with Section 9.7(a)) and the per Unit purchase price (or a reasonable estimate of the maximum and minimum per Unit purchase price) (the "**Tag-Along Notice**"). The tag-along rights provided by this Section 9.7 must be exercised by any Tag-Along Rightholder wishing to sell its Units within seven (7) Business Days following receipt of the Tag-Along Notice, by delivery of a written irrevocable offer (the "**Tag-Along Rightholder's Offer**") to the Tag-Along Seller indicating such Tag-Along Rightholder's wish to have an amount of its Units included in the Tag-Along Sale and specifying the number of Tag-Along Offered Units (up to the maximum number of Tag-Along Offered Units as determined in accordance with Section 9.7(a)) it wishes to sell, *provided* that any Tag-Along Rightholder may waive its rights under this Section 9.7 prior to the expiration of such seven (7) Business Day period by giving written notice to the Tag-Along Seller, with a copy to the Company. Subject to the other terms herein, delivery of the Tag-Along Rightholder's Offer will constitute an irrevocable commitment by such Tag-Along Rightholder to sell its Units on the terms set forth in such Tag-Along Rightholder's Offer. The failure of a Tag-Along Rightholder to respond within such seven (7) Business Day period shall be deemed to be a waiver of such Tag-Along Rightholder's rights under this Section 9.7 with respect to the transfer on the terms set forth in the Tag-Along Notice.

(c) The Tag-Along Seller shall attempt to obtain the inclusion in the proposed Tag-Along Sale of the entire number of Units that the Tag-Along Rightholders timely elect to have included in such Tag-Along Sale. If the Tag-Along Seller is unable to obtain such inclusion of all such Units, then (i) the number of Units to be sold in such Tag-Along Sale shall be allocated on a pro rata basis among the Tag-Along Seller and each Tag-Along Rightholder who shall have timely elected to participate in such Tag-Along Sale in proportion to the total number of Units offered and eligible to be sold in the Tag-Along Sale by each such Holder or (ii) the Tag-Along Seller shall be permitted to sell its Units in a Tag-Along Sale *provided* that it purchases, for the same price and upon the same terms, from each Tag-Along Rightholder who shall have timely elected to participate in such Tag-Along Sale the number of Units that the Tag-Along Rightholder could have included in such Tag-Along Sale (in each case calculated on a fully-diluted basis).

(d) If (i) the Tag-Along Seller has not consummated the Tag-Along Sale within sixty (60) days of the delivery of the Tag-Along Notice (for any reason other than the failure of a Tag-Along Rightholder to sell its Units under this Section 9.7) or (ii) the principal terms and conditions of the Tag-Along Sale shall change, in any material respect, from those in the Tag-Along Notice, then the Tag-Along Notice and any Tag-Along Rightholder's Offer shall be null and void, and it shall be necessary for a separate Tag-Along Notice to be furnished, and the terms and provisions of this Section 9.7 separately complied with, in order to consummate such proposed Tag-Along Sale pursuant to this Section 9.7; *provided*, *however*, that the Tag-Along Notice and the Tag-Along Rightholders' Offers shall not be null and void if the Tag-Along Seller receives the unanimous written consent of each of the Tag-Along Rightholders agreeing to an extension and/or revised terms. Notwithstanding any other provision of this Section 9.7, there shall be no liability on the part of any Tag-Along Seller to any other Member arising from the failure of any Tag-Along Seller to consummate the Tag-Along Sale for any reason, and the decision to consummate such Tag-Along Sale shall be in the sole discretion of the Tag-Along Seller.

9.8 Drag-Along Right.

(a) Upon receiving the requisite approval, pursuant to Section 6.8, of a sale of greater than 50% of the Units then outstanding (including a purchase by merger) to a Permitted Transferee (an "**Approved Sale**"), the Company shall send written notice (the "**Drag-Along Notice**") to the Members notifying them they will be required to sell their Units in such Approved Sale. Notwithstanding any other provision of this Section 9.8, any Approved Sale must satisfy the conditions set forth in Section 9.2 and otherwise be a Permitted Transfer.

(b) If the Approved Sale has not been consummated within ninety (90) days following delivery of the Drag-Along Notice, the Drag-Along Notice shall be null and void, each Member shall be released from his, her or its obligation under the Drag-Along Notice and it shall be necessary for a separate Drag-Along Notice to be furnished and the terms and provisions of this Section 9.8 separately complied with, in order to consummate such Approved Sale pursuant to this Section 9.8.

9.9 Provisions Applicable to Tag-Along and Drag-Along Sales.

(a) Each Member participating in a proposed sale under Section 9.7 or 9.8 shall take or cause to be taken at the expense of the Company all such reasonable actions consistent with the terms of this Agreement as may be necessary or reasonably desirable in order expeditiously to consummate such sale and any related transactions, including without limitation: executing, acknowledging and delivering consents, assignments, waivers and other documents or instruments; furnishing information and copies of documents reasonably requested of it; and otherwise reasonably cooperating with the selling Members or the Company, as the case may be, and the prospective buyer. Without limiting the generality of the foregoing:

(i) with respect to proposed Tag-Along Sales, each such participating Member agrees to execute and deliver such agreements as may be reasonably specified by the selling Member or the Company, as the case may be, (so long as all Members will be subject to the same terms), including without limitation agreements to (A) make individual customary representations, warranties, covenants and other agreements as to, among other things, the unencumbered title to its Units and the power, authority and legal right to transfer such Units, (B) be severally, not jointly, liable with all other sellers (whether by purchase price adjustment, indemnity payments or otherwise) in respect of representations, warranties, covenants and other agreements in respect of the Company and its subsidiaries and (C) be subject to confidentiality restrictions in respect of the business of the Company and its subsidiaries (with the operative provisions of such confidentiality restrictions substantially in the form of the Confidentiality Provisions); *provided*, *however*, that, with respect to representations, warranties and covenants of the type described in clause (B) above, the aggregate amount of such liability will not exceed the lesser of (1) such Member's pro rata portion of any such liability, to be determined in accordance with such Member's portion of the total amount of Units included in such sale and (2) the proceeds actually received by such Member in connection with such sale.

(ii) with respect to a proposed sale under Section 9.8 [Drag-Along] each such participating Member agrees to execute and deliver such agreements as may be reasonably specified by the selling Member or the Company, as the case may be, (so long as all Members will be subject to the same terms), including without limitation agreements to (A) make individual representations, warranties, covenants and other agreements that (y) are, in the case, acceptable to Members holding at least a Super-Supermajority of the Units then outstanding and (z) relate to, among other things, the unencumbered title to its Units and the power, authority and legal right to transfer such Units, (B) be severally, not jointly, liable with all other sellers (whether by purchase price adjustment, indemnity payments or otherwise) in respect of representations, warranties, covenants and other agreements in respect of the Company and its subsidiaries and (C) be subject to confidentiality restrictions in respect of the business of the Company and its subsidiaries (with the operative provisions of such confidentiality restrictions substantially in the form of the Confidentiality Provisions); *provided*, *however*, that, with respect to representations, warranties and covenants of the type described in clause (B) above, the aggregate amount of such liability will not exceed the lesser of (1) such Member's pro rata portion of any such liability, to be determined in accordance with such Member's portion of the total amount of Units included in such sale and (2) the proceeds actually received by such Member in connection with such sale.

(b) The closing of a sale pursuant to Section 9.7 or 9.8 will take place at such time and place as the selling Members or the Company, as the case may be, shall reasonably specify by notice to each participating Member. At the closing, in the case of a sale of Units, each participating Member shall deliver any certificates evidencing the Units to be sold by such Member, duly endorsed in blank by the Person(s) in whose name the certificate is issued or accompanied by a duly executed instrument of assignment separate from the certificate, free and clear of any liens or encumbrances, against delivery of the applicable consideration.

(c) In any sale pursuant to Section 9.7 or 9.8, the sale of Units by the selling Members shall be made on the same terms (including, without limitation, the per Unit price and the type of consideration to be received per Unit or each type of security being purchased) and shall be subject to the same conditions, and all such selling Members shall receive the proceeds from such sale (allocated as provided herein) at the same time.

SECTION 10
REPRESENTATIONS OF MEMBERS

Each Member represents, warrants, agrees and acknowledges that:

10.1 Organization; Authority. (a) It is a corporation, limited liability company, partnership or other entity, as applicable, duly organized or formed and validly existing and in good standing under the laws of the jurisdiction of its organization or formation; (b) it has all requisite corporate, limited liability company, partnership or other entity power and authority to enter into this Agreement, to acquire and hold its Units and to perform its obligations hereunder; and (c) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, limited liability company, partnership or other entity action.

10.2 No Conflict. (a) Its execution and delivery of this Agreement and the performance of its obligations hereunder will not (i) conflict with, result in a breach of or constitute a default (or any event that, with notice or lapse of time, or both, would constitute a default) or result in the acceleration of any obligation under any of the terms, conditions or provisions of any other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets are subject, which conflict, breach, default or acceleration could reasonably be expected to materially and adversely affect the performance of its obligations hereunder, or (ii) conflict with or violate any of the provisions of its organizational documents, or violate any statute or any order, rule or regulation of any court or governmental or regulatory agency, body or official, which conflict or violation could reasonably be expected to materially and adversely affect the performance of its obligations hereunder; and (b) it has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery and performance by it of its obligations hereunder, except where the failure of such Member to obtain any such consent, approval, authorization or order would not materially and adversely affect the performance of such Member's obligations hereunder.

10.3 No Proceeding. There is no litigation, action, suit, investigation, proceeding by or before any governmental authority or arbitrator pending or, to its knowledge, threatened against such Member, which would prohibit its entering into, or that could materially and adversely affect its ability to perform its obligations under, this Agreement.

10.4 Enforceability. This Agreement is a binding agreement on the part of such Member enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to creditors' rights and general principles of equity.

10.5 Acquisition of Units. It is acquiring its Units for its own account for investment purposes only and not with a view to the distribution or resale thereof, in whole or in part, and agrees that it will not Transfer all or any of its Units, or solicit offers to buy from or otherwise approach or negotiate in respect thereof with any Person or Persons whomsoever, all or any of its

Units in any manner that would violate or cause the Company or any Member to violate applicable federal or state securities laws.

10.6 Bank Holding Company Act.

(a) If, as of the date hereof or at any time hereafter, such Member holds five percent (5%) or more of the outstanding Units, such Member is not (a) subject to the U.S. Bank Holding Company Act of 1956, as amended from time to time (the "**BHCA**"), (b) directly or indirectly "controlled" (as that term is defined in the BHCA) by a company that is subject to the BHCA or (c) otherwise prohibited from owning, controlling or having the power to vote shares representing 5% or more of the Units outstanding from time to time.

(b) If any Member that holds, from time to time, five percent (5%) or more of the outstanding Units cannot, at any time hereafter, accurately make the representations set forth in clause (a) of this Section 10.6, then such Member shall be a "**BHCA Member**" for purposes of this Agreement including, without limitation, Section 6.11.

SECTION 11
DISSOLUTION AND WINDING UP

11.1 **Dissolution Events.**

(a) Dissolution. The Company shall dissolve and shall commence winding up and liquidating upon the first to occur of any of the following (each a "**Dissolution Event**"):

(i) with the approval of a majority of the Board and Members holding at least a Super- Supermaj ority of the Units then outstanding, to dissolve, wind up, and liquidate the Company; or

(ii) a judicial determination that an event has occurred that makes it unlawful, impossible or impractical to carry on the Business pursuant to Section 18-802 of the Act; or

(iii) the termination of the legal existence of the last remaining Member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining Member of the Company in the Company unless the Company is continued without dissolution in accordance with the Act.

The Members hereby agree that, notwithstanding any provision of the Act, the Company shall not dissolve prior to the occurrence of a Dissolution Event.

11.2 **Winding Up.**

Upon the occurrence of a Dissolution Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members, and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs, *provided* that all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding upon the Members until such time as the Property has been distributed pursuant to this Section 11.2 and the Certificate has been canceled pursuant to the Act. The Liquidator shall be responsible for overseeing the winding up and dissolution of the Company, which winding up and dissolution shall, to the extent practical, be completed within ninety (90) days of the occurrence of the Dissolution Event. The Liquidator shall take full account of the Company's liabilities and Property and shall cause the Property or the proceeds from the sale thereof, to the extent sufficient therefor, to be applied and distributed, to the maximum extent permitted by law, in the following order:

(a) First, to creditors (including Members who are creditors, to the extent permitted by law) in satisfaction of all of the Company's debts and other liabilities (whether by payment or the making of reasonable provision for payment thereof), other than liabilities for which reasonable provision for payment has been made and liabilities for distribution to members and former members under Section 18-601 or 18-604 of the Act;

(b) Second, except as provided in this Agreement, to Members and former Members of the Company in satisfaction of liabilities for distribution under Section 18-601 or 18-604 of the Act; and

(c) The balance, if any, to the Members pro rata based upon their respective holdings of the Units.

11.3 Liquidator Distributions.

In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Members pursuant to this SECTION 11 may be:

(a) distributed to a trust established for the ultimate benefit of the Members for the purposes of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company. The assets of any such trust shall be distributed to the Members from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Company would otherwise have been distributed to the Members pursuant to Section 11.2; or

(b) withheld to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, *provided* that such withheld amounts shall be distributed to the Members as soon as practicable.

11.4 Deemed Distribution and Recontribution.

Notwithstanding any other provision of this SECTION 11, in the event the Company is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g) but no Dissolution Event has occurred, the Property shall not be liquidated, the Company's debts and other liabilities shall not be paid or discharged, and the Company's affairs shall not be wound up. Instead, solely for federal income tax purposes and state income tax purposes, if applicable, the Company shall be deemed to have distributed the Property in-kind to the Members, who shall be deemed to have taken subject to all debts of the Company and other liabilities all in accordance with their respective Capital Accounts. Immediately thereafter, the Members shall be deemed to have recontributed the Property in-kind to the Company, which shall be deemed to have taken subject to all such liabilities.

11.5 Rights of Members.

Except as otherwise provided in this Agreement, each Member shall look solely to the Property of the Company for the return of its Capital Contribution and has no right or power to demand or receive Property other than cash from the Company. If the assets of the Company remaining after payment or discharge of the debts or liabilities of the Company are insufficient to return such Capital Contribution, except as otherwise provided in this Agreement, the Members shall have no recourse against the Company, any Manager or any other Member.

11.6 Notice of Dissolution/Termination.

(a) In the event (i) a Dissolution Event occurs or (ii) an event occurs that would, but for provisions of Section 11. 1, result in a dissolution of the Company, the Board shall, within thirty (30) days thereafter, provide written notice thereof to each of the Members and, in the event set forth in clause (i) above, to all other parties with whom the Company regularly conducts business (as determined in the discretion of the Board) and shall publish notice thereof in a newspaper of general circulation in each place in which the Company regularly conducts business (as determined in the discretion of the Board).

(b) Upon completion of the distribution of the Company's Property as provided in this SECTION 11, and the Liquidator causing the filing of the Certificate of Cancellation pursuant to Section 18-203 of the Act and taking all such other actions as may be necessary to terminate the Company, the Company shall be terminated.

11.7 Allocations During Period of Liquidation.

Except as otherwise provided in Section 11.2, during the period commencing on the first day of the year during which a Dissolution Event occurs and ending on the date on which all of the assets of the Company have been distributed to the Members pursuant to Section 11. 2, the Members shall continue to share Profits, Losses, gain, loss and other items of Company income, gain, loss or deduction in the manner provided in SECTION 3.

11.8 Character of Liquidating Distributions.

All payments made in liquidation of the interest of a Member in the Company shall be made, to the maximum extent permitted by the Code, in exchange for the interest of such Member in Property pursuant to Code Section 736(b)(1), including the interest of such Member in Company goodwill.

11.9 The Liquidator.

(a) Definition. The "**Liquidator**" means a Person appointed by the Board to oversee the liquidation of the Company.

(b) Fees. The Company is authorized to pay a reasonable fee to the Liquidator for its services performed pursuant to this SECTION 11 and to reimburse the Liquidator for its reasonable costs and expenses incurred in performing those services.

(c) Indemnification. The Company shall, to the fullest extent permitted by law, indemnify, save harmless, and pay all judgments and claims against such Liquidator or any officers, directors, agents or employees of the Liquidator relating to any liability or damage incurred by reason of any act performed or omitted to be performed by the Liquidator, or any officers, directors, agents or employees of the Liquidator in connection with the liquidation of the Company, including reasonable attorneys' fees incurred by the Liquidator, officer, director, agent or employee in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred, except to the extent such liability or damage is caused by the fraud, intentional misconduct of, or a knowing violation of the laws by the Liquidator which was material to the cause of action.

11.10 Form of Liquidating Distributions.

For purposes of making distributions required by Section 11. 2, the Liquidator may determine whether to distribute all or any portion of the Property in-kind or to sell all or any portion of the Property and distribute the proceeds therefrom. In the case of an in-kind distribution of the Property, the Capital Accounts of the Members shall be adjusted in accordance with Section 1.704-1(b)(2)(iv)(e)(1) of the Regulations to reflect the manner in which the unrealized income, gain, loss and deduction inherent in the Property (that has not previously been reflected in the Capital Accounts) would be allocated among the Members if there were a taxable disposition of the Property for its fair market value (taking into account Code Section 7701(g)) on the date of the distribution.

SECTION 12
INDEMNIFICATION

12.1 General.

(a) The Company, its receiver or its trustee, shall indemnify, to the fullest extent permitted by law, defend and save harmless each of the Members and each Manager, and their respective control persons, and the officers of the Company (each, an "**Indemnitee**") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that the Person is or was a Member or Manager, or their control persons, or an officer of the Company, or is or was serving at the request of the Company as a manager, director, officer, employee or agent of another limited liability company, 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 in connection with such action, suit or proceeding, other than such expenses, judgments, fines and amounts arising from the gross negligence or willful misconduct of such Indemnitee.

(b) The Company, its receiver or its trustee, shall indemnify, to the fullest extent permitted by law, defend and save harmless each Indemnitee who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact that the Person is or was a by reason of the fact that the Person is or was a Member or Manager, or their control persons, or an officer of the Company, or is or was serving at the request of the Company as a manager, director, officer, employee or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise against expenses (including reasonable attorneys' fees) actually and reasonably incurred by the Person in connection with the defense or settlement of such action or suit and except that no indemnification shall be made in respect of any claim, issue or matter (i) arising from the gross negligence or willful misconduct of such Indemnitee or (ii) as to which such Person shall have been adjudged to be liable to the Company, unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses that the Court of Chancery or such other court may deem proper.

(c) The Company may purchase and pay for insurance as would be customary for any Person engaging in a similar business.

(d) Any indemnification may be made by the Company only as authorized in Section 12.1(a), only if authorized in the specific case by (i) the Board (excluding any Manager that is an Indemnitee) and (ii) Members (excluding the Indemnitee and his, her or its Affiliates, as applicable) holding at least a Supermajority of the Units then outstanding, *provided* that if the Company refuses or is unable to so indemnify the Indemnitee, within thirty (30) days after a written claim has been received by the Company, the Indemnitee may at any time thereafter initiate proceedings against the Company pursuant to Section 13.10 to recover the unpaid amount of the claim and, if successful, in whole or in part, the Indemnitee shall be entitled to be paid also the expense of prosecuting such proceeding. The Company may assert as a defense to any such action that the Indemnitee has not met the standards of conduct set forth herein for the Company to indemnify the Indemnitee for the amount claimed.

(e) Notwithstanding the foregoing, to the extent a present or former Member or officer has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) or (b) or in defense of any claim, issue or matter therein, such Indemnitee shall be indemnified, to the fullest extent permitted by law, against cost, expenses (including attorneys' fees), loss and damage actually and reasonably incurred by the Indemnitee in connection therewith.

12.2 Advancement of Expenses.

The Company shall advance, to the extent funds are available or can be provided on behalf of the Company by PEH or any Plant LLC (subject to the restrictions contained in the Credit Agreement), all expenses incurred by an Indemnitee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding referenced in Section 12.1. The Indemnitee shall repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that such Indemnitee is not entitled to be indemnified by the

Company as authorized hereby. The advances able to be made hereunder shall be paid by the Company to the Indemnitee within ten (10) days following delivery of a reasonable written request therefor by the Indemnitee to the Company.

SECTION 13
MISCELLANEOUS

13.1 Notices.

Any notice, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been delivered, given, and received for all purposes (i) if delivered personally to the Person or to an officer of the Person to whom the same is directed, or (ii) when the same is actually received, if sent either by registered or certified mail, postage and charges prepaid, or by facsimile or electronic mail, if (y) delivery by electronic mail is permitted by such Person (which it shall be, unless otherwise indicated on such Person's signature page hereto) and (z) either (A) telephonic or electronic confirmation of delivery is obtained or (B) such facsimile or electronic mail is followed by a hard copy of the communication sent promptly thereafter by registered or certified mail, postage and charges prepaid, in each case addressed as follows, or to such other address as such Person may from time to time specify by notice to the Company: (a) if to the Company, to c/o JT Miller Group LLC, 777 Campus Commons Road #200, Sacramento, CA, 95825, facsimile 916.565.7423, jtm@jtmillergroup.com; and (b) if to any of the Members, to the notice address listed on such Member's signature page to this Agreement, or such updated address of which such Member has notified the Company pursuant to Section 2.6.

13.2 Binding Effect.

(a) Except as otherwise provided in this Agreement, every covenant, term, and provision of this Agreement shall be binding upon and inure to the benefit of the Members and their respective successors, Transferees, and assigns.

(b) Except as expressly set forth in SECTION 12, nothing herein expressed or implied is intended to confer upon any Person, other than the parties hereto or their respective permitted assigns, successors, heirs and legal representatives, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13.3 Construction.

(a) Every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any party.

(b) Many of the terms of this Agreement are intended to alter or extend provisions of the Act as they may apply to the Company or the Members. To the extent permitted by the Act, it is intended that the provisions of this Agreement shall override the provisions of the Act to the extent of any inconsistency or contradiction between them. Any failure of this Agreement to mention or specify the relationship of such terms to provisions of the Act that may affect the scope or application of such terms shall not be construed to mean that any such term is not intended to be an operating agreement provision authorized or permitted by the

Act or which in whole or in part alters, extends or supplants provisions of the Act as may be allowed thereby.

13.4 Time.

In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included, but the time shall begin to run on the next succeeding day. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

13.5 <u>Headings.</u>

Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

13.6 <u>Severability.</u>

Except as otherwise provided in the succeeding sentence, every provision of this Agreement is intended to be severable, and, if any term or provision of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity or legality of the remainder of this Agreement. The preceding sentence of this <u>Section 13.6</u> shall be of no force or effect if the consequence of enforcing the remainder of this Agreement without such illegal or invalid term or provision would be to cause any Member to lose the material benefit of its economic bargain.

13.7 <u>Incorporation by Reference.</u>

Every exhibit, appendix, schedule, and other addendum attached to this Agreement and referred to herein is incorporated in this Agreement by reference unless this Agreement expressly otherwise provides.

13.8 <u>Variation of Terms.</u>

All terms and any variations thereof shall be deemed to refer to masculine, feminine, or neuter, singular or plural, as the identity of the Person or Persons may require.

13.9 <u>Governing Law.</u>

The laws of the State of Delaware shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder, without regard to its conflicts of laws provisions.

13.10 <u>Submission to Jurisdiction; Waiver of Jury Trial and Venue.</u>

(a) <u>SUBMISSION TO JURISDICTION</u>. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS

PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

(b) WAIVER OF JURY TRIAL AND VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (i) ANY AND ALL RIGHTS SUCH PARTY MAY HAVE TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR AND (ii) ANY OBJECTION THAT SUCH PARTY MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY COURT REFERRED TO IN SECTION 13.10(a). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(c) Service of Process. Each party hereto agrees (i) that service of process may be effectuated by mailing a copy of the summons and complaint, or other pleading, by certified mail, return receipt requested, in accordance with Section 13.1 and (ii) to vote its Units to cause the Company at any time to make the consents, agreements and waivers contained in this Section 13.10 in respect of any action or proceeding against the Company by any Member.

13.11 Counterpart Execution.

This Agreement may be executed in any number of counterparts with the same effect as if all of the Members had signed the same document. All counterparts shall be construed together and shall constitute one agreement. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or electronic transmission (including a PDF file), shall be treated in all manner and respects as an original Agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of a facsimile machine or electronic transmission to deliver a signature or the fact that any signature was transmitted or communicated through the use of a facsimile machine or electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

13.12 Specific Performance.

Each Member agrees with the other Members that the other Members would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, to the fullest extent permitted by law, in addition to any other remedy to which the nonbreaching Members may be entitled, at law or in equity, the nonbreaching Members shall be entitled to seek injunctive relief to prevent breaches of the provisions of this Agreement and specifically to enforce the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction thereof.

13.13 No Third Party Beneficiaries.

It is understood and agreed among the parties that this Agreement and the covenants made herein are made expressly and solely for the benefit of the parties hereto (including any Person admitted to the Company as provided in Section 2.2), and that no other Person, other than an Indemnitee under Section 12.1, shall be entitled or be deemed to be entitled to any benefits or rights hereunder, nor be authorized or entitled to enforce any rights, claims or remedies hereunder or by reason hereof.

13.14 Entire Agreement.

This Agreement contains the entire understanding and agreement among the Members with respect to the subject matter hereof, and supersedes all prior agreements and all contemporaneous oral agreements. Other than the Credit Agreement (and the documents executed and delivered pursuant thereto and in connection therewith) and the Call Option Agreement, there are no other agreements, understandings, representations or warranties among the Members.

* * *

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the day first above set forth.

[MEMBER]

By: ____________________________
Name:
Title:

Notice Address:

Name: _____________________________

Address: __________________________
____
Facsimile: __________________________
Email: _____________________________

APPENDIX I

DEFINED TERMS

"**Act**" means the Delaware Limited Liability Company Act, 6 Del. C. §18-101 et seq., as amended from time to time (or any corresponding provisions of succeeding law).

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is deemed to be obligated to restore pursuant to the penultimate sentences in Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations; and

(ii) Debit to such Capital Account the items described in Sections 1.704- 1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"**Affiliate**" means with respect to a Person, any Person directly or indirectly controlling, controlled by, or under common control with such Person. For the purposes of this definition, the terms "controlling," "controlled by" or "under common control" means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person.

"**Agreement**" means this Amended and Restated Limited Liability Company Agreement of New PE Holdco LLC, including the Appendices , Exhibits and any Schedules attached hereto, as the same shall be amended from time to time. Words such as "herein," "hereinafter," "hereof," "hereto" and "hereunder" refer to this Agreement as a whole, unless the context otherwise requires.

"**Approved Sale**" has the meaning set forth in Section 9.8(a).

"**Asset Management Agreement**" means that certain Asset Management Agreement, dated as of the Effective Date, by and among Pacific Ethanol, Inc., PEH and each of the Plant LLCs (as it may be further amended, restated or otherwise modified from time to time) or any successor or replacement asset management agreement.

"**Associated Lender**" means the lender under the Credit Agreement that is an Affiliate of an initial Member or has otherwise designated a Member for purposes of this Agreement, as indicated on Appendix II hereto.

“**Assumed Tax Rate**” means the highest combined federal and state tax rate on corporations, applicable to any Member, after giving effect to the maximum amount of state income tax deductible for federal income tax purposes.

“**BHCA**” has the meaning set forth in Section 10.6(a).

“**BHCA Member**” has the meaning set forth in Section 10.6(b).

“**Board**” has the meaning set forth in Section 5.1(a).

“**Board Election**” has the meaning set forth in Section 5.2(b).

“**Budgets**” has the meaning set forth in Section 5.6(b).

“**Business**” has the meaning set forth in Section 1.3(a).

“**Business Day**” means a day of the year, other than a Saturday or Sunday, on which banks are not required or authorized to close in New York, New York.

“**Call Option**” has the meaning assigned to such term in the Call Option Agreement.

“**Call Option Agreement**” means that certain Call Option Agreement, dated as of the Effective Date, by and among the Company, Pacific Ethanol, Inc. and the Members party thereto, whereby such Members have granted to Pacific Ethanol, Inc. an option to purchase all or some portion of their respective Units, as set forth therein and as governed by the terms thereof.

“**Call Option Counterparty**” means Pacific Ethanol, Inc. under, and in its capacity as a party to, the Call Option Agreement.

“**Capital Account**” means, with respect to any holder of Units, the capital account established and maintained in accordance with the following provisions:

(i) the Capital Account of each Member shall initially be credited with the amount of such Member’s Original Capital Contribution;

(ii) thereafter, to each Member’s Capital Account there shall be credited (A) the amount of money and the Gross Asset Value of any Property contributed by the Member with respect to Units pursuant to any provision of this Agreement, (B) such Member’s distributive share of Profits and any items in the nature of income or gain to the extent allocated pursuant to SECTION 3 to holders of Units, and (C) the amount of any Company liabilities assumed by such Member or which are secured by any Property distributed to such Member with respect to its Units; and

(iii) to each Member’s Capital Account there shall be debited (A) the amount of money and the Gross Asset Value of any Property distributed to such Member with respect to its Units pursuant to any provision of this Agreement, (B) such Member’s distributive share of Losses and any items in the nature of expenses or losses to the extent allocated pursuant to SECTION 3 with respect to such Member’s Units, and (C) the amount of any liabilities of such Member assumed by the Company or which are secured by any Property contributed by such Member to the Company with respect to its Units.

"**Capital Contributions**" means, with respect to any Member, the amount of money and the initial Gross Asset Value of any Property (other than money) contributed to the Company with respect to Units.

"**Certificate**" means the certificate of formation filed with the Secretary of State of the State of Delaware pursuant to the Act to form the Company, as originally executed and amended, modified, supplemented or restated from time to time, as the context requires.

"**Chief Operating Officer**" has the meaning set forth in Section 5.4(a).

"**Code**" means the United States Internal Revenue Code of 1986, as amended from time to time.

"**Company**" has the meaning set forth in the preamble to this Agreement.

"**Company Minimum Gain**" has the meaning set forth in Section 1.704-2(d) of the Regulations.

"**Confidentiality Provisions**" has the meaning set forth in Section 5.5(d).

"**Credit Agreement**" means that certain Credit Agreement, dated as of the Effective Date, by and among PEH, the Plant LLCs, the lenders party thereto, WestLB AG, New York Branch, as administrative agent and collateral agent, and Amarillo National Bank, as accounts bank.

"**Depreciation**" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided*, *however*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board.

"**Designated Manager**" has the meaning set forth in Section 5.2(c).

"**Designating Member**" has the meaning set forth in Section 5.2(c).

"**Dissolution Event**" has the meaning set forth in Section 11.1(a).

"**Distributable Cash**" means cash that is available for distribution to the Members, as determined by the Board, *provided* that no cash shall be Distributable Cash, if distribution of such cash is not permitted under the Act.

"Drag-Along Notice" has the meaning set forth in Section 9.8(a).

"Effective Date" has the meaning set forth in the preamble.

"Exit Facility Lender" has the meaning assigned to such term in the Reorganization Plan.

"Exit Facility Member" means any Member that is, or whose Associated Lender is, an Exit Facility Lender.

"Exit Facility Sub-Capital Account" means, with respect to any Exit Facility Member, the portion of the Capital Account (if any) of such Member resulting from such Member receiving Units in its capacity as an Exit Facility Member in accordance with Section 6.02(a) of the Reorganization Plan.

"Fiscal Year" means the calendar year, unless the Company is required to have a different fiscal year for federal income tax purposes. The Company shall have the same Fiscal Year for financial and partnership accounting purposes.

"Gross Asset Value" means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the Board;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values (taking Code Section 7701(g) into account, as determined by the Board) as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (B) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (C) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), *provided* that an adjustment described in clauses (A) and (B) of this paragraph shall be made only if the Board reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any item of Company assets distributed to any Member shall be adjusted to equal the gross fair market value (taking Code Section 7701(g) into account) of such asset on the date of distribution as determined by the Board; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (vi) of the definition of "Profits" and "Losses" or Section 3.2(c) ; *provided*, *however*, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (iv) to the extent that an adjustment pursuant to subparagraph (ii) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (ii) or (iv), such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset, for purposes of computing Profits and Losses.

"**Indemnitee**" has the meaning set forth in Section 12.1(a).

"**Joinder Agreement**" means a Joinder Agreement in the form of Exhibit A attached to this Agreement.

"**Liquidator**" has the meaning set forth in Section 11.9(a).

"**Losses**" has the meaning set forth in the definition of "Profits" and "Losses."

"**Management Company**" means the company employed pursuant to the Asset Management Agreement to provide management services to the Company, PEH and/or any Plant LLC.

"**Manager**" has the meaning set forth in Section 5.2(a).

"**Member**" means a Person who is issued Units, or, if applicable, a Person who has become a substituted Member pursuant to the terms of this Agreement, *provided* that such Person has not ceased to be a Member pursuant to this Agreement or the Act.

"**Member Nonrecourse Debt**" has the same meaning as the term "partner nonrecourse debt" in Section 1.704-2(b)(4) of the Regulations.

"**Member Nonrecourse Debt Minimum Gain**" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i)(3) of the Regulations.

"**Member Nonrecourse Deductions**" has the same meaning as the term "partner nonrecourse deductions" in Sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.

"**Non-Exit Facility Sub-Capital Account**" means, with respect to any Member, the portion of the Capital Account (if any) of such Member that is not an Exit Facility Sub-Capital Account.

"**Nonrecourse Deductions**" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations.

"**Nonrecourse Liability**" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

"**Original Capital Contribution**" has the meaning set forth in Section 2.3(a).

"**PEH**" has the meaning set forth in the recitals to this Agreement.

"**Pending Trade**" means a sale of the debt obligations arising under the Prepetition Credit Agreement (as defined in the Reorganization Plan), which sale was pending prior to the Effective Date (in accordance with the evidence of such pendency delivered to the Prepetition Agent (as defined in the Reorganization Plan), which evidence is satisfactory to the Prepetition Agent in its sole discretion).

"**Permitted Transfer**" has the meaning set forth in Section 9.1.

"**Permitted Transferee**" means (i) with respect to any Member, an Affiliate thereof, (ii) a Person who is a Member at the time of the Transfer, (iii) the Call Option Counterparty in connection with the exercise of the Call Option or (iv) a "qualified institutional buyer" (as such term is defined in Rule 144A of the Securities Act of 1933, as amended from time to time (or any corresponding provisions of succeeding law)).

"**Person**" means any individual, partnership (whether general or limited), limited liability company, corporation, trust, estate, association, nominee or other entity.

"**Plant LLCs**" has the meaning set forth in the recitals to this Agreement.

"**Plants**" has the meaning set forth in the recitals to this Agreement.

"**Profits**" and "**Losses**" mean, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of "Profits" and "Losses" shall be subtracted from such taxable income or loss;

(iii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year, computed in accordance with the definition of Depreciation;

(vi) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required, pursuant to Regulations Section 1.704-(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(vii) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 3.1(b), Section 3.2 or Section 3.3 shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 3.1(b), 3.2 and 3.3 shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (vi) above.

"**Property**" means all real and personal property acquired by the Company, including cash, and any improvements thereto, and shall include both tangible and intangible property.

"Record Date" has the meaning set forth in Section 2.7.

"**Regulations**" means the Income Tax Regulations, including Temporary Regulations, promulgated under the Code, as such regulations are amended from time to time.

"**Regulatory Allocations**" has the meaning set forth in Section 3.3.

"**Reorganization Plan**" has the meaning set forth in the recitals to this Agreement.

"**Roll-Up Corporation**" has the meaning set forth in Section 8.2(a).

"**Supermajority**" has the meaning set forth in Section 6.8(c).

"**Super-supermajority**" has the meaning set forth in Section 2.3(b).

"**Tag-Along Notice**" has the meaning set forth in Section 9.7(b).

"**Tag-Along Offered Units**" has the meaning set forth in Section 9.7(a).

"**Tag-Along Purchaser**" has the meaning set forth in Section 9.7(a).

"**Tag-Along Rightholder**" has the meaning set forth in Section 9.7(a).

"**Tag-Along Rightholder's Offer**" has the meaning set forth in Section 9.7(b).

"**Tag-Along Sale**" has the meaning set forth in Section 9.7(a).

"**Tag-Along Seller**" has the meaning set forth in Section 9.7(a).

"**Tax Matters Member**" has the meaning set forth in Section 7.3(a).

"**Term Loans**" has the meaning assigned to such term in the Credit Agreement.

"**Transfer**" means, as a noun, any voluntary or involuntary transfer, sale, pledge or hypothecation or other disposition and, as a verb, voluntarily or involuntarily to transfer, sell, pledge or hypothecate or otherwise dispose of. "**Transferred**,""**Transferor**" and "**Transferee**" shall have comparable meanings.

"**Unit Certificate**" has the meaning set forth in Section 2.5(b).

"**Units**" has the meaning set forth in Section 2.1(a).

EXHIBIT A

FORM OF JOINDER

JOINDER AGREEMENT

This JOINDER AGREEMENT dated as of [, 20] (the "Joinder Agreement") is made and entered into by [ ], a [ ] (the "New Member"), pursuant to that certain Limited Liability Company Agreement of New PE Holdco LLC, dated as of June 29, 2010 (as such agreement may be amended, supplemented or otherwise modified, renewed or replaced from time to time, the "LLC Agreement"). Capitalized terms used but not defined herein has the meanings given to such terms in the LLC Agreement.

W I T N E S S E T H

The New Member desires to purchase or become a transferee of the Units described on Schedule 1 hereto (the "Transferred Units") and to be admitted as a Member of New PE Holdco LLC, a Delaware limited liability company (the "Company"), as of the date first set forth above. Pursuant to Section 2.2 of the LLC Agreement, the New Member is required to execute this Joinder Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, the New Member hereby agrees as follows:

1. Joinder and Assumption.

(a) The New Member hereby confirms that it has assumed, and hereby agrees to perform and observe, each and every one of the covenants, rights, promises, agreements, terms, conditions, obligations, appointments, duties and liabilities applicable to a Member of the Company under the LLC Agreement. By virtue of the foregoing, the New Member hereby accepts and assumes any liability of a Member of the Company related to each covenant or obligation of a Member of the Company in the LLC Agreement. Upon the execution of this Joinder Agreement, the New Member is hereby admitted to the Company as a Member of the Company.

(b) As of the date hereof, all references to the term "Member" in the LLC Agreement or in any document or instrument executed and delivered or furnished, or to be executed and delivered or furnished, in connection therewith shall be deemed to be references to, and shall include, the New Member.

2. New Member Representations and Warranties. The New Member hereby represents and warrants to the Company that the New Member has the requisite power and authority to enter into this Joinder Agreement and to perform its obligations hereunder and under the LLC Agreement. The New Member has the power and authority to execute, deliver and perform the obligations imposed on it under the LLC Agreement and this Joinder Agreement and to consummate the transactions contemplated by the LLC Agreement and this Joinder Agreement. No other proceedings, consents, approvals, registrations or filings on the part of the New Member are necessary to authorize the execution, delivery or performance of this Joinder Agreement, the transactions contemplated hereby or the performance of its obligations under the LLC Agreement or this Joinder Agreement. This Joinder Agreement has been duly executed and delivered by the New Member. This Joinder Agreement and the LLC Agreement each constitutes a legal, valid and binding obligation of the New Member enforceable against it in accordance with its terms, subject to the enforcement of remedies, applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

3. Covenants of the Company.

(a) The Company will treat the New Member as the owner of such Units from the date hereof.

(b) The Company will allocate to the New Member the distributive share of membership income, gain, loss, deduction, and credit associated with such Units for the entire period during which the New Member is the holder of the Units on the records of the Company.

4. Further Assurances. At any time and from time to time, upon the Company's request and at the sole expense of the New Member, the New Member will promptly and duly execute and deliver any and all further instruments and documents and take such further action as the Company reasonably deems necessary to effect the purposes of this Joinder Agreement.

5. Binding Effect. This Joinder Agreement shall be binding upon the New Member and shall inure to the benefit of the Company and its Members and their respective successors and assigns.

6. GOVERNING LAW. **THIS JOINDER AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN THE STATE OF DELAWARE.**

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered by its duly authorized officer as of the date first above written.

[NEW MEMBER]

By: /s/

Name:

Title:

COMPANY

NEW PE HOLDCO LLC,
a Delaware limited liability company

By: /s/

Name:
Title:

SCHEDULE 1

Acquired Units

Class of Units:

Number of Units:

EXHIBIT B

FORM OF CERTIFICATE

[See attached]

CERTIFICATE EVIDENCING UNITS OF

NEW PE HOLDCO LLC

(Pursuant to Section 18-702(c) of the Delaware Limited Liability Company Act)

Certificate No.: C-XX Units Issued: XX

THIS CERTIFIES THAT ___________________________, is the registered holder of ___________(____)Units of New PE Holdco LLC (the "***Company***") transferable only on the books of the Company by the holder hereof, in person or by a duly authorized attorney, upon surrender of this Certificate properly endorsed and accompanied by a properly executed application for transfer of one or more of the Units represented by this Certificate, subject to certain restrictions contained in the Limited Liability Company Agreement of New PE Holdco LLC, dated as of June 29, 2010.

IN WITNESS WHEREOF, this Certificate has been signed by a duly authorized representative of the Company as of __________________.

[___________]

BY:___________________________
NAME:
TITLE:

FOR VALUE RECEIVED, THE UNDERSIGNED DOES HEREBY SELL, ASSIGN, AND TRANSFER UNTO _______________ __________ (_____) UNITS EVIDENCED BY THIS CERTIFICATE AND DOES HEREBY IRREVOCABLY CONSTITUTE AND APPOINT AS ITS ATTORNEY-IN-FACT WITH FULL POWER OF SUBSTITUTION TO TRANSFER THE SAME ON THE BOOKS OF THE COMPANY.

DATE: __________, _____

NOTE: THE SIGNATURE MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THIS CERTIFICATE IN EVERY PARTICULAR, WITH NO ALTERATION, ENLARGEMENT OR CHANGE.

IN PRESENCE OF:_____________________________

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAW, AND SUCH SECURITIES MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, OR IN THE OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE COMPANY SUCH REGISTRATION AND QUALIFICATION ARE NOT REQUIRED.

EXHIBIT C

CONFIDENTIALITY PROVISIONS

[This Confidentiality Agreement (the "Agreement") is entered into as of [Date] by and between [entity name] ("[Party A]"), and [entity name] (the "[Party B]"; together with the [Party A], the "Parties" and each a "Party").]

In connection with [*describe relevant situation*], a Party (the "Disclosing Party") may furnish certain information to the other Party (the "Receiving Party") in connection therewith. The term "Information" shall mean all confidential and/or proprietary information that a Disclosing Party has furnished or is furnishing to a Receiving Party, whether furnished before or after the date of this Agreement, whether tangible or intangible and in whatever form or medium provided, as well as all information generated by the Receiving Party or by its Representatives (as defined below) that contains, reflects or is derived from the furnished information.

In consideration of the Disclosing Party's disclosure to it of the Information, the Receiving Party agrees that it will keep the Information confidential and that the Information will not, without the prior written consent of the Disclosing Party, be disclosed by the Receiving Party or by its officers, directors, partners, employees, affiliates, attorneys, accountants, professional advisors, agents or representatives (collectively, "Representatives"), in any manner whatsoever, in whole or in part, and shall not be used by the Receiving Party or its Representatives other than in connection with the [*describe relevant situation*]. Moreover, the Receiving Party agrees to inform its Representatives of this Agreement and be fully liable for any breach of this Agreement by its Representatives.

The terms and conditions of this Agreement shall not apply to any item of the Information: if such Information (i) was known to the Receiving Party or its Representatives previous to its receipt of such Information; (ii) is, or becomes, readily available to the public other than through a breach of the obligations set forth herein; or (iii) has been, or is later disclosed to the Receiving Party by a third party not known by the Receiving Party to be bound by any confidentiality agreement regarding such Information; or (iv) was independently developed by the Receiving Party, either before or after the reference date of this Agreement, without using any of the Information or on behalf of the Receiving Party by persons without access to the Information.

Notwithstanding anything to the contrary set forth herein, the Receiving Party shall be permitted to disclose the Information if the Receiving Party is required by applicable law, regulation, subpoena, court order or other legal process or requested by any governmental agency or other regulatory authority (including any self-regulatory organization having or claiming to have jurisdiction). The Receiving Party agrees that it will notify the Disclosing Party as soon as practical in the event of any such disclosure (other than as a result of an examination by any regulatory authority), unless such notification shall be prohibited by applicable law or legal process, so that the Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained or if the Disclosing Party otherwise provided its prior written consent, the Receiving Party shall furnish only that portion of the Information that in the opinion of the Receiving Party's counsel is legally required (or, in the case of request by a governmental agency or other regulatory authority, that is in accordance with the Receiving Party's usual practice with respect to such requests) and shall disclose the Information in a manner reasonably designed to preserve its confidential nature.

The Receiving Party acknowledges and agrees that, in the event of any breach of this Agreement, the Disclosing Party would be irreparably and immediately harmed and could not be made whole by money damages. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled at law or in equity, the Disclosing Party shall be entitled to seek an injunction or injunctions (without the posting of any bond and without proof of actual damages) to prevent breaches or threatened breaches of this Agreement and/or to compel specific performance of this Agreement, and that the Receiving Party will not oppose the granting of such relief. The Receiving Party also agrees to reimburse the Disclosing Party for all reasonable costs and expenses, including reasonable attorney fees, incurred by the Disclosing Party in attempting to enforce the obligations of the Receiving Party or its Representatives hereunder.

No failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof.

This Agreement may be modified or waived only by a separate writing signed by all of the Parties expressly so modifying or waiving such Agreement. This Agreement shall terminate two years from the date hereof.[1]

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1 The following language would be applicable in connection with the Confidentiality Provisions solely in the context of a Tag-Along Sale or a sale under Section 9.8 [Drag-Along]: "This Agreement is not intended, and shall not be construed, to (i) create any exclusive relationship between the Parties, (ii) prohibit or restrict in any manner the ability of the [seller] to solicit or transact any business with the customers, clients or counterparties of the [buyer], or (iii) obligate either Party to enter into any agreement relating to the Transaction. Each Party agrees that, unless and until a definitive agreement between the [buyer] and the [seller] with respect to the [sale] has been executed and delivered, neither the [buyer] nor the [seller] will be under any legal obligation of any kind whatsoever with respect to the [sale] by virtue of this or any other written or oral expression by it or any of its Representatives except for the matters specifically agreed to herein."

EXHIBIT 21.1

SUBSIDIARIES OF THE REGISTRANT

Subsidiary Name	Names Under Which Subsidiary Does Business	State or Jurisdiction of Incorporation or Organization
Pacific Ethanol California, Inc.	Pacific Ethanol	California
Kinergy Marketing, LLC	Kinergy Marketing	Oregon
ReEnergy, LLC	ReEnergy	California
Pacific Ag Products, LLC	Pacific Ag Products/PAP	California

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors
Pacific Ethanol, Inc.
Sacramento, California

We consent to the incorporation by reference in Registration Statements (Nos. 333-106554, 333-123538, 333-137663 and 333-169002) on Form S-8 and (Nos. 333-127714, 333-135270, 333-138260, 333-143617 and 333-147471) on Form S-3 of Pacific Ethanol, Inc. of our report dated March 31, 2011 relating to our audits of the consolidated financial statements, which appears in this Annual Report on Form 10-K of Pacific Ethanol, Inc. for the year ended December 31, 2010.

/s/ HEIN & ASSOCIATES LLP

Irvine, California

EXHIBIT 31.1

CERTIFICATION

I, Neil M. Koehler, certify that:

1. I have reviewed this Annual Report on Form 10-K of Pacific Ethanol, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2011

/s/ NEIL M. KOEHLER
Neil M. Koehler
President and Chief Executive Officer

(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION

I, Bryon T. McGregor, certify that:

1. I have reviewed this Annual Report on Form 10-K of Pacific Ethanol, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 31, 2011

/s/ BRYON T. MCGREGOR
Bryon T. McGregor
Chief Financial Officer

(Principal Financial and Accounting Officer)

EXHIBIT 32.1

CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report on Form 10-K of Pacific Ethanol, Inc. (the "Company") for the year ended December 31, 2010 (the "Report"), the undersigned hereby certify in their capacities as Chief Executive Officer and Chief Financial Officer of the Company, respectively, pursuant to 18 U.S.C. section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 31, 2011

By: /s/ NEIL M. KOEHLER
Neil M. Koehler
Chief Executive Officer
(Principal Executive Officer)

Date: March 31, 2011

By: /s/ BRYON T. MCGREGOR
Bryon T. McGregor
Chief Financial Officer
(Principal Financial and Accounting Officer)

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signatures that appear in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.